THEY ESCAPED THE HANGMAN

NOTABLE AMERICAN TRIALS

by FRANCIS X. BUSCH

Prisoners at the Bar
Guilty or Not Guilty?
They Escaped the Hangman

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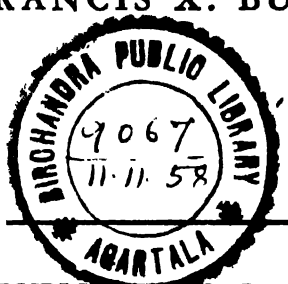
An Account of the Trials of

THE CALEB POWERS CASE
THE RICE-PATRICK CASE
THE HALL-MILLS CASE
THE HANS HAUPT CASE

By FRANCIS X. BUSCH



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FOREWORD

THIS VOLUME—*They Escaped the Hangman*—follows the publication in February 1952 of *Prisoners at the Bar* and *Guilty or Not Guilty?*, which inaugurated the series of Notable American Trials, and adheres to the pattern there set.

They Escaped the Hangman is a nontechnical but factually accurate account of four significant American criminal trials. Dealing with crimes widely variant in circumstances and motivations and set against widely diverse backgrounds and environments, these cases are all significant as mirroring actual but by no means ordinary situations which have arisen in the administration of criminal justice in the United States.

The cases selected for this volume are unique in that, because of peculiar local conditions, a combination of fortuitous circumstances or superior advocacy, the defendants in every case—and all were charged with capital crimes and faced prosecutions where the incriminating evidence was strong—managed to escape the extreme penalty of the law.

The full story of the assassination of Governor William Goebel of Kentucky in 1900 and the subsequent trials of Caleb Powers and others for the murder has never before been told. The so-called Rice-Patrick case has been the subject of numerous published articles, but it has seemed to the writer that the medical testimony—the most important evidence in the trial and the basis for Patrick's ultimate release from prison—has never been fully or adequately presented. The Hall-Mills case also has been written up many times, but not, I believe, with sufficient emphasis on the badly, and perhaps deliberately, bungled investigation which made conviction of the obvious suspects next to impossible. The Hans Haupt case, while not so widely known as the other three, was the first case of conviction for treason against the United States to be reviewed and sustained by the Supreme Court of the

United States. The trial and its background of World War II enemy espionage have never before been made the subject of critical study.

I am deeply indebted to the following for their courtesy and aid in making available to me the official court transcripts and other sources of information concerning the four trials: For the account of the Powers case to Mr. Bayless E. Hardin, secretary-treasurer of the Kentucky State Historical Society, Frankfort, Kentucky, and Miss Lutie Kinkead, secretary of the Filson Club, Louisville, Kentucky. For the account of the Rice-Patrick case to Mr. John Minary of the Columbia Broadcasting Company, The New York Law Institute, Miss Elizabeth Bragdon of The Bobbs-Merrill Company, Inc., and to Mr. John F. Tyrrell and Mr. Donald Dowd, Questioned Document Examiners, Milwaukee, Wisconsin. For the account of the Hall-Mills case to the New York Law Institute and friends connected with New York daily newspapers who supplied me with a copy of the record but prefer to remain anonymous. For the account of the Hans Haupt case to the Honorable Otto Kerner, United States Attorney; Mr. Richard G. Finn, former Assistant United States Attorney; Mr. Paul A. F. Warnholtz; and Mr. Ralph Miller, Jr.—all of Chicago.

My gratitude is also due to the clerks of the courts and other public officials and to librarians in public and private libraries in Louisville, New York, Washington and Chicago for courtesies extended in making files available; to Mrs. Marian A. Hodgkinson and Mrs. Virginia Weissman and my daughter Mrs. Frances Busch Zink for library research, copying, comparing and proofreading manuscript; and to my wife for her valuable suggestions, encouragement and inexhaustible patience.

FRANCIS X. BUSCH.

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CALEB POWERS

and

OTHERS

for Complicity in the Murder of

GOVERNOR GOEBEL

of Kentucky (1900-1907)

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The Caleb Powers Case

THE NUMBER *of popular elections in the United States is greater than the total in all the rest of the world. We have national elections, state elections, county elections, district elections, municipal elections; there are elections to choose executive, legislative and judicial officers, elections to recall faithless office holders, elections to determine governmental policy. And the amazing fact, which has been commented on by such detached and objective observers as Bryce and De Tocqueville, is that, although these thousands of contests are more often than not waged with intense bitterness, the majority result, when promulgated by constituted authority, is almost invariably accepted by the losing side, and the public administration (better or worse) goes on until the time arrives for another election.*

Kentucky's election in 1899 for the governorship and other state offices is the conspicuous exception to this generalization. There, after the result of the bitterest election contest in Kentucky's history had been regularly announced and the declared winners inducted into their offices, the defeated opposition succeeded—through political manipulations in the state legislature and the courts—in having the incumbents ousted and its own candidates installed in their places. In the process the architect and principal beneficiary of the scheme, the opposition candidate for governor, William Goebel, was shot to death.

It is with this crime and the prosecutions of its alleged perpetrators that this narrative is concerned. Sixteen persons, including the man declared on the face of the returns

to have been elected governor, were indicted. Five were tried. One of the five, Caleb Powers, was tried four times. He was thrice convicted and once sentenced to death.

The case is significant because it is—so far as I know—the only case in the criminal annals of America where political passions and political manipulations in their most virulent forms entered the courts and determined their judgments.

THE COMMONWEALTH OF KENTUCKY is a state of contrasts. Its varied topography—from Big Black Mountain on its southeastern Virginia boundary, across the Allegheny plateau to the lush bluegrass country in which lies the capital city of Frankfort—presents no sharper contrasts than are to be found between its eastern "mountain people" and its more favorably located citizens in the rich Ohio and Mississippi valleys. Few states present a wider variety of occupational interests. In its rural areas a diversified agriculture (Indian corn, tobacco, hemp, flax and the more usual farm crops), coal mining, timber cutting, horse and mule breeding and cattle raising are carried on. Its numerous urban centers contain planing mills, flour mills, cotton mills, woolen mills, tanneries, and plants and factories for distilling liquor and making cigars, cigarettes and snuff. Kentucky's population includes whites and blacks, native and foreign born, Catholics and Protestants. In the War between the States no other state had so close a division of Unionists and Secessionists. That in its long and colorful history there should have been marked divergencies in its political philosophies and alignments is not surprising.

From the late 1850s until 1895 a large proportion of the state's 120 counties regularly returned substantial majorities for the candidates of the Democratic party. However, a score or more counties in the mountain country in the eastern and southeastern portions of the state went just as consistently Republican. And in other counties scattered through the state the party division was sufficiently close that in hard-

fought local contests Republicans occasionally emerged as victors.

Prior to 1895 these limited local successes had given the Democratic politicians little concern. The closely knit party machine controlled the state without too much difficulty. Every fourth odd-numbered year since 1859 it had elected a Democratic governor and lieutenant governor and a full slate of state officers. Both houses of the state legislature, through large Democratic majorities, were kept in harmony with the state administration. There were usually at least four Democrats on the seven-member court of appeals—the highest court in the state.

On the other hand, the recurring local victories of the Republicans served to keep alive a vigorous state-wide organization, alert and ready to take advantage of any change in the political weather.

The long-awaited change came in 1895. Grover Cleveland had taken office as President on March 4, 1893. The repeal by Congress in the following November of the Sherman Silver Purchase Act (which had obligated the Government to purchase annually at market value four and a half million ounces of silver for coinage) precipitated the bitterest dispute the country had known since the Civil War. It split the Democratic party wide open. In the midterm Congressional elections of 1894 Democrats in some districts advocated the "single gold standard"; in others they sought election or re-election as champions of "free silver." The Republicans, on the other hand, were united on a platform of "sound money" and the "gold standard."

Currency was not the only issue. The country was in the throes of one of the worst depressions (they called them "panics" in those days) it had known since the early seventies. Although it had commenced before President Cleveland took office, it continuously deepened during his tenure, and in the usual pattern the party in power got the blame for it.

It was under these conditions that the November 1895 state elections in Kentucky were held. The result was the election

of a Republican governor (Bradley) and the entire Republican state ticket.

In the national election a year later, with a Populist and "regular" and "gold standard" Democratic tickets in the field, McKinley carried the state. Five of the state's elected Congressmen were Republicans—the largest national representation that party had ever had.

The Democrats had suffered two crushing defeats. The party machinery had broken down. The situation called for new and aggressive leadership, and William Goebel, a young state senator from Covington in Kenton County, took over the job.

William Goebel was born in Pennsylvania in 1856. His parents were well-regarded German immigrants. The family, consisting of father, mother and four children, settled in Kenton County, Kentucky, when William, the eldest child, was ten years of age. William received such preliminary education as the rather inadequate public and private schools of the neighborhood afforded. For a brief period he attended Kenyon College at Gambier, Ohio, and later supplemented his law studies in ex-Governor Stevenson's office with a formal law course in a Cincinnati law school.

In 1877 he was admitted to the Kentucky bar and in a surprisingly short time built up an extensive and lucrative practice. He became active in politics with the casting of his first vote. In 1886 he was elected to the state senate, where he soon became one of its most influential members. He was a skilled parliamentarian and a master of political strategy. He was studious, industrious, cool-headed, resourceful and ambitious. In the pursuit of his objectives he was determined and, when the occasion demanded, utterly ruthless.

The first major effort of the new Democratic leadership was directed to securing complete control of the state's election machinery. To do this it was necessary to amend so as to substantially repeal the existing election law. Goebel personally drafted the new law, and it took his name—"the Goebel Election Law."

Under the existing law the county election boards—consisting of the county judge, the county clerk and the sheriff of the county—appointed the precinct judges and clerks of election and determined election contests. This awarded to the dominant political group in the several counties the control of the election machinery; the Democrats controlled in the Democratic counties, the Republicans in the Republican counties.

By the proposed Goebel bill the general assembly would appoint three commissioners, styled the "state election board." This board would appoint three persons in each county as a county board of election commissioners, which would name the officers of election, canvass the votes and determine contests for the local offices. The state board would determine contests for all state offices other than governor and lieutenant governor (the state constitution provided that these should be heard and determined by the legislature). As a final insurance for complete legislative control the Goebel bill provided that decisions of the state and subordinate county election boards should not be subject to judicial review.

The effect of the Goebel bill would be to turn over to the state legislature complete control of the state's election machinery. That body, with the exception of one term (1895-1897), had for the preceding fifty years been Democratic and, in all likelihood, would continue to be dominated by that party.

The Goebel bill was introduced in the 1898 session of the legislature. In the 1897 elections the Democratic representation in the general assembly had been largely increased; both houses were "safely" Democratic. Despite strong opposition from the Republicans and some Democrats, the Goebel bill was passed by the remaining Democratic majority. Republican Governor Bradley promptly vetoed it, but the legislature, under Goebel's lash, passed it over the veto, and on March 11, 1898, it became law.

Wise old Henry Watterson, distinguished editor of the Louisville *Courier-Journal,* foresaw the shadow cast by com-

ing events when he declared: "Goebel followed out his own ambition in desiring to become Governor of Kentucky, and he sees, or thinks he sees, a ready chariot thither in the electoral bill that bears his name."

There was an immediate judicial test of the law's constitutionality. The case came before the state's high court of appeals in December 1899. The political constitution of the court was four Democrats and three Republicans. Its decision followed that exact division. The Democratic majority upheld the law, overruling every objection raised against it. The Republican minority dissented, finding the law vulnerable to every attack made on it.[1]

This was the state of the law in Kentucky on June 21, 1899, when the Democratic state convention was called to order in the city of Louisville. Goebel, as had been anticipated, was a candidate for the nomination for governor. Both his opponents entered the convention with more instructed delegates than Goebel. However, through clever manipulation Goebel secured control of the credentials committee, and before the voting commenced he succeeded in ousting many of the delegates opposed to him. The balloting proceeded through forty-eight riotous hours. On the twenty-fifth ballot Goebel received a majority of the votes cast and was declared the party's nominee for governor.

The nomination of a full slate of candidates for state offices—all Goebel partisans—followed. Only one of them figures in this narrative—J. C. W. Beckham, the nominee for lieutenant governor.[2]

So far as a well-manipulated partisan convention could express it, Goebel's triumph was complete.

There were, however, many Democrats in and outside the so-called regular Democratic organization who opposed Goebel and the Goebel Election Law and refused to abide by the

[1] *Purnell v. Mann*, 105 Ky. 87, 20 Ky. L. Rep. 1146, 48 S. W. 407.

[2] Mr. Beckham at the time of his nomination had just passed his thirty-first birthday and was a practicing lawyer in Bardstown, Kentucky. He had previously served three terms as state representative from Nelson County and in the legislative sessions from 1894 to 1898 had been Speaker of the House.

choices of the Louisville convention. Protest meetings were called and held throughout the state. The culmination was a convention at Lexington on August 6 of hundreds of anti-Goebel Democrats representing all parts of the commonwealth. This body nominated "independent" Democratic candidates for all the state offices. Heading the ticket as its standard-bearer and nominee for governor was ex-Governor John Young Brown, a lifelong Democrat widely known throughout the state as its most brilliant orator.

The Republican state convention met in Lexington in the week following the Democratic convention which nominated Goebel. William S. Taylor, who had ably served the state during the preceding four years as attorney general, was nominated on the first ballot as the party's choice for governor.[3] There was no substantial contest over any of the remaining places on the ticket. It is with one of these, however—the office of secretary of state—that this narrative is chiefly concerned. The successful nominee for that office was a young man who had just passed his thirtieth birthday, Caleb Powers.

Our story will necessarily follow Caleb Powers through the years of his life after 1900. Just a word here as to his life before that eventful year. His forebears were Virginians. Shortly after the Revolution they had followed the westward course of empire and settled in the then remote "mountain country"—later to become eastern Kentucky. His parents were solid, hard-working Christian folk who, by the primitive agricultural methods common to a backward area, forced a not-too-ample living from the stony soil. Caleb, the oldest of four children, was born in 1869 in Whitley County near the Virginia border.

Powers' primary education was of the catch-as-catch-can variety provided by the intermittently functioning one-room

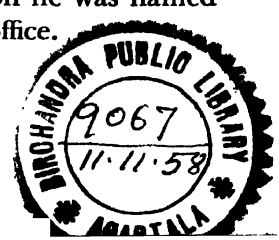
[3] Taylor was a native Kentuckian and at the time of his nomination for governor was forty-six years of age. Shortly after his admission to the bar he had been elected county clerk of Butler County, a position he held until 1886, when he was elected county judge of Butler County. In the latter office he had served two terms and in 1895 had been nominated on the Republican ticket for the office of attorney general.

log schoolhouses of Whitley and Knox counties. When he was sixteen he entered Union College at Barbourville in Knox County. It offered courses of study approximating the curriculum of the present-day public high school. After two years at Centerville College in Danville, Kentucky, young Powers took and passed a "teacher's examination" and was issued a certificate entitling him to teach in the Knox County public schools. With the money earned by teaching during intervening terms he financed himself for a year or more of study at the Agricultural and Mechanical College at Lexington. In June 1890 he secured an appointment as a cadet to the United States Military Academy at West Point and successfully passed the entrance examinations. He had been there about a year when a serious eye ailment caused a two-year interruption in his studies. When he recovered he enrolled in the law department of the Indiana Normal School at Valparaiso, Indiana, and completed its prescribed course of study.

Powers' interest and activity in Republican politics dated from the time he was eligible to vote. He was serious-minded, personable, friendly and an orator of no mean ability. In 1893 he was nominated on the Republican ticket and elected county superintendent of schools for Knox County. In 1894 he was admitted to the bar of Kentucky and commenced the practice of law at Barbourville.

Tragedy first crossed his path in 1898. In January he married his boyhood sweetheart, Laura Rawlins of Burning Springs, Kentucky. In July of the same year she was fatally stricken with spinal meningitis.

After his wife's death Powers plunged even more deeply into politics, stumping for Republican candidates from one end of the state to the other. In 1897 he was re-elected county superintendent of schools. In the spring and summer of 1899 he made a state-wide campaign for the Republican nomination for secretary of state. He was well known throughout the state and had a strong following in the Republican mountain districts. At the party's convention he was named on the first ballot as its candidate for that office.



The 1899 campaign got into high gear about the middle of August. It was the bitterest political struggle in Kentucky's history. The principal issue was the Goebel Election Law; the favorite target, Goebel himself.

Goebel waged a vigorous personal campaign. He denied all the charges made against him and defied his detractors. He rehashed the material which had proved effective in his previous campaigns for the legislature; he damned the Republicans for having stolen the elections of 1895 and 1896 and called them destroyers of state rights. He denounced the excessive charges of textbook publishers for the books used in the public schools. He railed against the exploitation of the public by the "bloodsucking railroads," giving particular attention to the Louisville & Nashville Railroad, which was the principal line serving Kentucky.

Excited orators for the opposition branded Goebel as a demagogue and a criminal. One of the Brown spellbinders declared he opposed Goebel because he had "violated three Christian precepts: 'Thou shalt not lie, Thou shalt not steal and Thou shalt not kill.' "[4] Powers, as one of the featured Republican orators, made himself conspicuous by his unrestrained, inflammatory utterances against Goebel.

As election day neared both sides took every advantage that possession of authority afforded. The Democrats in control of the election machinery in Louisville made last-minute substitutions in the personnel of election boards and the location of polling places and swore in hundreds of extra police "to preserve order." The Republican state administration, as a countermeasure, dispatched three companies of militia to Louisville "to make sure that order was preserved and electors afforded protection at the polling places."

Despite the later Democratic claim that thousands of voters

[4] This reference was to the fact that Goebel had shot and killed John Sandford, a prominent banker in Covington. Goebel had published a defamatory statement concerning Sandford, and Sandford had sworn he would kill Goebel on sight. They met in a public street. Both drew their pistols and fired simultaneously. Sandford fell, mortally wounded. Goebel was unhurt. Goebel claimed—and eyewitnesses supported him—that he had fired in self-defense. He was never indicted.

were intimidated by the presence of the militia and failed to vote, the truth is that election day—November 7, 1899—witnessed the largest outpouring of voters ever seen at a Kentucky election.

First returns indicated that the result was close, but by early morning the generally accepted report was that Taylor and the entire Republican state ticket had won. Taylor gave out a statement claiming the election "in spite of the Democratic disfranchisement of 25,000 voters.' Goebel followed with a declaration that when the *legal* votes were canvassed he would be shown to be the winner.

The official canvass of the vote proceeded slowly. Final returns certified to the secretary of state showed a majority for the Republican ticket of 2,483 votes. Under the terms of the Goebel Election Law it was now up to the state board of elections to issue certificates of election to the successful candidates. Contrary to Democratic expectations and Republican fears, that board, by a vote of two to one, issued certificates of election to Taylor and his Republican associates.

Taylor was immediately sworn in as governor, a Democratic chief justice of the court of appeals administering the oath of office. Powers and the other Republican candidates were sworn in and took their offices on January 1. Powers was sworn in by an employee in the state auditor's office, a stenographer and notary public named Henry E. Youtsey. Youtsey was destined to play a stellar role in the tragic events soon to follow.

But for Goebel, it is quite likely that the regular Democratic organization would have accepted the bitter disappointment of another Republican victory. Goebel, however, had, to use his own words, "just begun to fight."

Partisan resentment against Pryor and Ellis—the two Democratic members of the state election board who had certified the Republicans as victors—forced their resignations. This precipitated another court battle. Taylor, as governor, claimed the right to fill the vacancies and named two Republicans. Poyntz, the surviving member of the board, claimed

the right under the Goebel Law to name successors to the resigned members and designated two Goebel Democrats.

Litigation to determine the right to the offices followed, and the case came on for hearing before the Kentucky high court of appeals on January 16. That court, as before, was constituted of four Democrats and three Republicans. Again the court divided on strict party lines. The Democratic majority held in favor of Poyntz and his appointees. The three dissenting Republicans held the Poyntz appointments illegal.[5]

Goebel's next step was to file with the legislature a contest on behalf of himself and Beckham for the offices of governor and lieutenant governor. The petitions charged that in thirty-eight of the state's counties—all of which on the face of the returns showed Republican majorities—the ballots used had been printed on paper so thin and transparent that the voters' pencil marks on the face of the ballots could be seen from the reverse side. This, the petitions claimed, destroyed the secrecy of the ballot guaranteed by the state constitution and rendered illegal all the ballots cast in those counties. It was also charged that the militia had intimidated and kept thousands of voters away from the polls and that the Louisville & Nashville Railroad had forced its employees to vote against Goebel and Beckham.

The Goebel Law provided that election contests for the offices of governor and lieutenant governor should be first heard by a committee of the legislature made up of three senators and eight representatives chosen by lot. The report of this committee, before becoming final, must receive the approval of a majority of the full legislative membership. By a strange run of luck or some mysterious legerdemain the drawing of names produced nine Goebel Democrats and two Republicans.[6] Taylor and Marshall, the acting lieutenant governor, protested in vain to the legislature against the extremely partisan make-up of the committee and the openly declared

[5] *Poyntz* v. *Shackelford*, 107 Ky. 546, 21 Ky. Law Rep. 1323, 54 S. W. 855.

[6] The party division in the legislature was 76 Goebel Democrats, 48 Republicans, 4 anti-Goebel Democrats and 2 Populists.

bias of several of its members. Their protests were disregarded, and the hearing of evidence began.

The result was foregone. Unless there should be some drastic intervention, the committee was set to unseat Taylor and Marshall. The newly constituted Democratic state election board could be relied on to oust the other Republican office holders. The Republicans called mass protest meetings throughout the state. The Republican press fulminated against the projected disregard of the popular will and the theft of the offices. Despite the clamor, the legislative hearing continued.

In desperation some Republican leaders conceived the idea of bringing large delegations of protesting voters from various sections of the state to the capital at Frankfort. The purpose of these delegations, in view of what followed, was to become the subject of much controversy.

Powers, as the principal Republican leader in the mountain districts, was assigned or undertook the task of bringing fifteen hundred petitioners from the eastern and southeastern sections of the state.

The general march on Frankfort did not materialize, but Powers brought down some thousand or twelve hundred armed men from the mountains. They met in the capitol grounds and adopted resolutions to present to the legislature. What they did after that was the subject of much conflicting evidence in the numerous criminal proceedings which followed.

On January 29, according to the later contentions of Powers and his associates, the Republicans decided to bring another delegation to Frankfort, this time from the western part of the state. On the thirtieth Powers, accompanied by his brother and four other Republican politicians, repaired to Louisville to round up such a group. While they were on the train a few miles outside Louisville the news was flashed over the wires that William Goebel had been shot down in the capitol square at Frankfort by an unknown assassin.

A wave of popular indignation which leaped party lines

swept the state. It was quite generally assumed that the assault had been committed by Republican partisans.

The Democratic leaders were quick to take advantage of the shift in popular sentiment. An immediate meeting of the legislative committee was called and the evidence declared closed. The Republicans vainly protested that many of their witnesses had not been heard. On January 31 the committee, with eight of its members signing, issued its report. It declared that Goebel and Beckham and the entire Democratic state ticket had been elected by the *legal* votes cast and that Taylor and the other Republican office holders should be unseated.

Crowds of angry, threatening partisans, most of them armed, milled through the streets surrounding the capitol and executive offices. There were open threats of reprisal by Goebel adherents—threats to kill Taylor and the other Republicans holding the state offices. Taylor, either in accordance with a prearranged plan or from conviction that mob violence was imminent and his own safety threatened, proclaimed a state of public emergency. On his order the state militia dispersed the crowds.

Immediately after the legislative committee's report the Goebel representatives and senators issued a call for a meeting of the legislature on February 1. Taylor, under his assumed power to act in the declared state of emergency, issued a contrary order directing the legislature to meet on February 6 at London, Kentucky, rather than at Frankfort. The Goebel legislators ignored the order and on the morning of the first marched in a body to the capitol. At the doors of the legislative chambers they were halted by the crossed bayonets of militiamen. The angered legislators then marched to the City Hall. Again armed soldiers barred their entry.

Late in the afternoon the Democrats found a place to assemble—one of the large public rooms of the Capital Hotel. Here, in a session which the Republicans later stamped as unauthorized and illegal, the Goebel Democrats in separate and joint house sessions approved the report of the legislative

committee and declared that Goebel and Beckham had been legally elected to the offices of governor and lieutenant governor.

On February 2 William Goebel, conscious but rapidly sinking, took the oath of office as governor of Kentucky. He had won his last fight. The following day, just at sunset, he breathed his last. At 7:00 P.M., February 3, 1900, Lieutenant Governor J. C. W. Beckham was sworn in as his successor.

The fight, however, was not yet over. The Republicans in the assembly, meeting separately, declined to recognize the actions of the Democratic legislators, and Taylor and his associates refused to surrender their offices. For two months Kentucky had a dual government—the Republicans operating from the capitol and state executive offices; the Democrats from the Capital Hotel.

Both sides rushed into the courts. Taylor filed suit in Jefferson County against Beckham to enjoin him from exercising the functions of governor. Beckham on the same day filed a similar suit against Taylor in Franklin County. The cases were consolidated and heard by the circuit-court judge of Jefferson County, who on March 10 rendered a decision upholding the Democrats. The case was promptly appealed and advanced for hearing in the high court of appeals. On April 6 that court affirmed the judgment of the lower court. Its opinion followed the established pattern: the four Democrats in the majority sustained the actions of the Democratic Capital Hotel assembly; the three Republicans dissented.[7]

One last recourse was left to the Republicans: an appeal to the Supreme Court of the United States.

Meanwhile the state election board discharged its function as expected. It held that all the Democratic candidates for the lesser state offices had been duly elected by a majority of the *legal* votes cast and that the Republican incumbents were usurpers.

On May 21, 1900, the Taylor-Beckham case was decided by

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[7] *Taylor* v. *Beckham*, 108 Ky. 278, 21 Ky. Law Rep. 1735, 56 S. W. 177.

the Supreme Court of the United States. The majority of the court held that the question involved—a *state* election and a contest over *state* offices—were matters of purely local concern in which the judgment of the highest court in the state was final.[8] The refusal of the Supreme Court to act settled the question of who was governor of the state of Kentucky.

In the three months intervening between the action of the legislature and the court's decision, however, there had been much Democratic activity. A determined campaign was begun to uncover the assumed conspiracy which had culminated in the assassination of Goebel. The first act of the Democratic legislature was to appropriate $100,000 of state funds to apprehend and punish his murderers.[9] $25,000 of this was earmarked for the investigation and running down of clues which might lead to their identification and arrest. $5,000 was to be a reward for such person or persons as would furnish information which would result in the conviction of any principal or accessory. A horde of lawyers, investigators and detectives flocked to Frankfort, and the man hunt began.

On March 9 W. H. Culton, a clerk in the state auditor's office, was arrested. On the same day warrants were issued for Charles Finley, former secretary of state in the Bradley administration, John Davis, a state-police captain, Caleb Powers and his brother John. All were charged with having been accessories to the murder of William Goebel.

Finley and John Powers successfully evaded the process servers. Finley found sanctuary in Republican-controlled Indiana. John Powers concealed himself in the hills of eastern Kentucky and later made his way to South America.

Acting on the warning of their friends that their lives were in danger and that they could not hope for fair trials, Caleb Powers and Davis also decided to leave Kentucky. Before doing so, they solicited and obtained from Taylor (still purporting to act as governor) a pardon for any "alleged complicity" in the murder of William Goebel.

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[8] 178 U. S. 548, 610.

[9] The Republicans absented themselves from these meetings.

In the late evening of March 10, dressed in army uniforms and accompanied by a squad of uniformed state militiamen, they boarded a regularly scheduled Chesapeake & Ohio eastbound passenger train which would take them out of the state. Their flight was discovered almost immediately. When the train stopped at Lexington a huge crowd—civil officers, a sheriff's posse, state guards and armed citizens—boarded it. Powers and Davis were seized, dragged from the train and hurried through a menacing crowd to the county jail.

Two days later the prisoners, handcuffed together, were secretly removed to the county jail at Louisville. Culton and a man named Holland Whittaker had been arrested and taken there earlier.

Caleb Powers, Davis, Whittaker and Culton were not the only ones to feel the reaching arm of the law. Two Negroes—Richard (alias "Tallow Dick") Combs and Mason Hockersmith—had repeatedly been named in the Democratic press as having been hired to do the fatal shooting. It had also been charged that Robert Noakes, a minor Republican politician who had been particularly active against Goebel in Whitley County; Henry Youtsey, previously mentioned as the notary public who had sworn in Caleb Powers as secretary of state; and two other minor Republican office holders, Hazelipp and Sutton, had been active in the plot. All these except Noakes were promptly arrested and lodged in the jail at Frankfort.

On April 2 a grand jury convened in Franklin County under the charge of Circuit Judge James E. Cantrill to hear the presentation by the prosecuting authorities of the evidence they had assembled as to the identity of the Goebel assassins and their accessories. Ten of its twelve members were Goebel Democrats. Under Kentucky law the concurrence of nine jurors is sufficient for the return of an indictment. Three days later the ten Democrats on the grand jury returned an indictment. Its contents were kept secret until April 17.

The indictment, reported to have been based largely on information sweated out of Youtsey, charged Holland Whit-

taker, Berry Howard, Henry E. Youtsey, James B. Howard and Richard (alias "Tallow Dick") Combs as principals and W. H. Culton, F. Wharton Golden, Charles Finley, Caleb Powers and John Powers as accessories in the murder of William Goebel. At later times indictments were returned against William S. Taylor, Captain John Davis, Zach Steele, Garnett D. Ripley, Green Golden and Franklin M. Cecil.

Although Taylor did not know it, a warrant for his arrest had been placed in the hands of a deputy sheriff of Franklin County for service on him in the event the decision of the Supreme Court of the United States was favorable to the Democrats. When Taylor learned that the decision of the Kentucky court of appeals had been upheld he immediately telephoned the adjutant general at Frankfort to dismiss the militia which for so many weary weeks had been on guard at the statehouse. Taylor turned the government over to Beckham, then procured a conveyance, eluded the process servers and drove across the Ohio River into Indiana.

Twenty persons in all were accused and arrested as principals in or accessories to the assassination of William Goebel. Sixteen were indicted. Three of these, under promises of immunity or for other considerations, turned "state's evidence" and became witnesses for the prosecution. Of the remaining thirteen only five were brought to trial—Caleb Powers, James B. Howard, Henry Youtsey, Berry Howard and Garnett D. Ripley. It is with these, and particularly with the four trials of Caleb Powers, that this narrative is chiefly concerned.

Frustrated by the escapes of Taylor and Finley and the refusal of Indiana's Republican governor to extradite them, the Democratic prosecution hurled its full weight against Powers. Of those indicted he was the highest-ranking Republican within the jurisdiction of the Kentucky courts. Powers' conviction of complicity in a plot to murder Goebel, said the Republican press, was "a political necessity." It would establish the "diabolical Republican conspiracy" and supply needed fuel for the Democratic machine for years to come.

Powers' Republican friends rallied to his support. A huge

defense fund was raised, and some of the ablest lawyers in Kentucky were retained as his counsel.

Such was the atmosphere in which Caleb Powers was brought to trial.

The First Trial of Caleb Powers

The first trial of Caleb Powers began July 9, 1900. The defense had been granted a change of venue from Franklin County, in which the crime had been committed, and the trial took place at Georgetown in adjoining Scott County. No advantage to Powers was realized from the change. Scott County was in the same judicial circuit as Franklin County, and Cantrill, the circuit judge who had charged the grand jury which had indicted Powers, presided. The commonwealth attorney for the circuit followed the case into Scott County. Scott, like Franklin County, had a Democratic sheriff who, under the law, would select, summon and have custody of the jurors.

Judge Cantrill, in the lifetime of Governor Goebel, had been one of his closest friends. He was an impressive figure—tall, athletic, with flowing side whiskers; stern-looking, positive and determined in manner. Throughout the trial he made no effort to conceal his prejudgment of the defendant.

Appearing with the commonwealth's prosecuting attorney, Franklin, were Special Assistant Prosecutors Thomas C. Campbell, Colonel John K. Hendrick, Victor F. Bradley, B. B. Golden, Ben C. Williams, L. W. Arnett, Samuel Crosland and Willard Mitchell.

Robert B. Franklin, who because of his official position was nominally the leader for the prosecution, was a native of Franklin County. First elected commonwealth attorney in 1897, he had established himself in the confidence of the community as an incorruptible, brilliant and vigorous prosecutor.

Thomas C. Campbell had been engaged by William Goebel's brothers, Arthur and Justus, as "special prosecutor." His early practice had been in Cincinnati, where he had special-

ized in the defense of persons accused of crime and run up an impressive record of acquittals in desperate cases. In 1884, after getting into serious difficulties with the city and county authorities in connection with the defense of persons implicated in the serious Cincinnati riots of that year, he had removed to New York City. There he had continued the practice of law, largely in the criminal courts. At the time of the first trial of Caleb Powers he was in his middle sixties. Although Campbell's previous experience had been chiefly directed to extricating people from the toils of the law, he proved in the Powers case to be as vicious a prosecutor as ever appeared in an American courtroom.

Hendrick, Bradley and Williams were all experienced and capable trial lawyers. These, with Franklin and Campbell, took the leads. The others at the prosecutor's table played minor but essential roles.

Appearing for the defendant were Messrs. John Young Brown, James C. Sims, George Denny, H. C. Faulkner, Robert C. Kinkead, W. C. Owens, Samuel M. Wilson and James H. Tinsley.

John Young Brown, who led for the defense, was one of Kentucky's most prominent Democrats. He had served a term in the United States Congress and in 1891 had been elected to a four-year term as governor. He was a capable, forceful and fearless advocate and threw himself wholeheartedly into Powers' defense.

Ex-Judge Sims of Bowling Green, Kentucky, had a national reputation as a successful trial lawyer. Denny, Faulkner, Kinkead, Owens, Wilson and ex-Judge Tinsley of Barbourville were all lawyers of reputation and ability.

The first move of the defense was the offer of the pardon given Powers by Governor Taylor and a plea for dismissal. The plea was promptly denied, and a jury of twelve men was called into the jury box.

Although the "jury wheel" contained the names of over 300 veniremen who had been lawfully chosen before the murder of Goebel, the sheriff, at Judge Cantrill's direction, sum-

moned as the trial panel only twenty-four men whose names were taken from that receptacle. From counsel's preliminary examination it appeared that this group was made up of about an equal number of Democrats and Republicans. Through adversary challenges, for cause and peremptory, all were excused. The Court then elected, despite the vigorous protest of defendant's counsel, to ignore the remaining names in the wheel and directed the sheriff to summon for jury service 100 "talesmen" or "bystanders." Those thus summoned were practically all Goebel Democrats. When that panel of 100 was exhausted other panels of 100 each were similarly selected and presented.

For three days the examinations continued. Powers' lawyers did the best they could. They objected to the panels as irregularly summoned. They argued individual challenges for cause. When these were denied they exhausted their peremptories. When the end was reached there were twelve Goebel Democrats on the jury solemnly sworn to give the Republican defendant Powers a fair and impartial trial.

Special Prosecutor Campbell, in a lurid and inflammatory opening, stated the case for the prosecution: Senator Goebel, a citizen of sterling worth, had been murdered in cold blood after a "monstrous Republican conspiracy" to rob him of the office of governor had failed. The murder had been the culmination of that conspiracy. The defendant Powers had been one of its ringleaders. It was Powers who had brought an "army" of armed mountaineers to Frankfort. It was from Powers' office in the executive building that the shots which killed Goebel had been fired. It was Powers who, according to witnesses whom the Commonwealth would produce, had declared that Goebel had to be gotten out of the way, by killing him if necessary. When the murder had been accomplished the usurping Republican administration, of which Powers was a part, had called out the militia to protect the murderers. When the first accusations were made against Powers he had solicited and procured a pardon from the pretended Republican governor. When a warrant was issued for

his arrest he had acted as all criminals do when trapped: he had tried to escape. All of this, concluded the special prosecutor, added up to one unmistakable conclusion: Powers was guilty and should suffer the death penalty for "the most atrocious crime in Kentucky's history."

The Commonwealth called sixty-six witnesses.

The first was a civil engineer and surveyor who produced and authenticated a scaled plat which he had prepared of the statehouse grounds, buildings, walks and objects which would figure in the later testimony.

A brief description of the scene of the crime, as shown by this plat, will help the reader follow the testimony of the numerous witnesses who claimed to have been in the capitol grounds or buildings at the time Goebel was shot.

Capitol Square, so called, occupied a full city block at the north end of Frankfort's business district. It was bounded by public streets on all four sides and enclosed by a fence and gates. The state capitol, a two-story brick-and-stone structure approximately 60 x 100 feet in area, stood in the center of the square, facing south. Forty feet to the east and on a line with the capitol was the somewhat larger three-story-and-basement brick executive building.

There was a slight gradual rise in the capitol grounds as one approached the statehouse from Broadway, their southern boundary. A wide stone walk, some hundred or more feet in length, led from the street to the columned porch of the building.

The north and south ends of the executive building were separated by an east-west corridor from which doors led to the outside of the building and to the basement. The north portion of the first floor was occupied by the state auditor, the south portion by the governor and the secretary of state. There were other state offices on the two upper floors.

The secretary of state's private office occupied the southwest corner of the executive building; the governor's private office the southeast corner. Between these two offices was a large reception room used in common by the governor and

LEWIS
AUDITOR'S DEPARTMENT
HALL
GOV OFFICE
RECEPTION ROOM
OFFICE SEC OF STATE
GATE
GATE
BROADWAY
MADISON
A PLAN OF THE CAPITOL GROUNDS

secretary of state. A door from the secretary of state's private office opened onto the large corridor. Fifteen feet east of the exit door was a stairway which led down to the basement, in which there were several partitioned rooms, including one used as a barbershop. There were wide exits from the basement to the capitol grounds. A second door from the private office of the secretary of state and a door from the governor's private office opened into the common reception room.

In all the offices there were large two-piece windows of the usual type. With only two of these was the evidence concerned: the two in the secretary of state's private office which faced the south.

The Commonwealth produced nineteen witnesses who testified to having heard the shooting and seen Goebel fall.[10] The four most important were E. F. Lillard and Colonel Jack Chinn, Goebel's bodyguards, who had been with him at the time he was shot; Ed Steffy, a telegraph messenger boy; and George F. Weaver, who testified he was a barber by trade but was presently working as an organizer for a fraternal order.

The consensus of the testimony of all of the witnesses was that on January 30, 1900, at about eleven o'clock in the morning, Goebel, accompanied by Chinn and Lillard, was walking from Broadway up the walk which led to the capitol building steps. When he had traversed about half the distance there was a shot, followed within a few seconds by three or four other rapidly succeeding shots, and Goebel fell, not far from the fountain in the center of the walk. All agreed that, although cold, the day was bright and clear, and they were certain the sounds of the shots came from the southwest corner of the executive building. A number of them were more definite and fixed the sounds as coming from one of the windows in the secretary of state's private office on the first floor.

Nearly all the witnesses professed to have noticed a definite difference between the first and the succeeding shots: the first was "sharp" and "clear," "sounded like it came from a

[10] In this narrative the order in which the witnesses were called has been disregarded.

rifle"; the later ones were "not the same," "they were not so sharp." Several witnesses said they sounded like revolver shots.

Chinn and Lillard marked with definiteness the spot where Goebel fell. They swore the shots came from the second or most easterly window in the secretary of state's private office and that the window was slightly raised from the bottom and the window shade pulled down.

Steffy and Weaver testified they saw a rifle barrel sticking out of one of the windows of the secretary of state's private office. Steffy was not sure which of the two windows it was. Weaver thought it was the first or more westerly window.

There was substantial agreement among the prosecution's witnesses that within four or five minutes *after* the shooting the square, in which there had previously been very few people, was filled with uniformed militiamen, fully armed, who forcibly barred all persons, including civil officers, from both the capitol and executive building.

Aid was immediately rushed to the stricken Goebel. Doctors examined him on the ground and later in his rooms at the Capital Hotel, to which he was removed. It was determined that a bullet had penetrated his body three inches to the right of the right nipple, breaking the sixth rib; taking a downward course through the chest wall and the lower lobe of the right lung, it had grazed the spine and exited between the ninth and tenth ribs an inch and a half to the left of the spine.

Two witnesses testified to finding a bullet hole in the trunk of a hackberry tree which stood on the west side of the entrance walk to the capitol. From it, they said, they had extracted a thirty-eight-caliber steel bullet. The surveyor who made the plat of the scene testified that he had stretched a taut, supported line from the most easterly window of the secretary of state's private office to the bullet hole in the hackberry tree. The whole distance was just a fraction less than 200 feet. From the window to the spot where Goebel fell was 113 feet. At that point the surveyor's cord was four and a

half feet above the surface of the ground. Goebel was five feet, eight inches tall, and it was the contention of the prosecution in later argument that the fatal bullet had entered Goebel's body at a height of approximately four and half feet and that the slightly downward course of the bullet through his body followed approximately the line marked by the surveyor's cord.

An even score of witnesses were called to tell of the organization and activities of the "mountain army" and the purpose of Caleb Powers and others in bringing it to Frankfort. About many of the facts there was no substantial dispute. The idea seems to have originated with Governor Taylor, former Secretary of State Finley and Caleb Powers. Active parts in the recruiting and equipping of the men were played by Culton, a lawyer and former claims clerk in the state auditor's office; Robert Noakes, a conductor on the Louisville & Nashville Railroad and a local Republican political leader in Whitley County; F. Wharton Golden, an examiner for the Knox County circuit court and a minor Republican politician of Barbourville; and Caleb Powers and his brother John.

Seeking to establish the purpose of bringing the army to Frankfort, the prosecution submitted the testimony of Culton, Noakes, Golden and others as to declarations they said had been made by Caleb Powers, Finley and John Powers. Culton and Golden were under indictment for the murder and had turned "state's evidence" in the hope (which was realized) of escaping prosecution. Noakes, while not indicted, had been suspected and arrested; with a similar motive he had made his peace with the Commonwealth's prosecutors. Four additional witnesses who were not under the same compulsion testified to conversations with Caleb Powers and Finley in which the purpose of the movement was stated.

Finley B. Anderson, a Western Union telegraph operator at Barbourville, testified that Caleb Powers told him that "the men were going to Frankfort to intimidate the legislature and, if necessary, kill off enough Democrats to leave a Republican majority."

John D. Black, a banker of Barbourville, testified that Caleb Powers told him they were bringing an "armed mob" from the mountain counties, about 1,500 altogether, and they were going to "assert their rights" and "influence" or "intimidate" the legislature.

W. P. Reeder, a deputy clerk of the circuit court of Knox County, testified to having seen Caleb Powers, John Powers, Finley and Wharton Golden together at Barbourville on January 24. He said he asked Finley if he thought there would be trouble, and Finley said he thought there would be. He next asked Finley if he thought they would kill Goebel, and Finley replied, "It would not surprise me if they did."

Wade H. Watts, a janitor at the Louisville & Nashville depot at Frankfort, testified that on the afternoon of January 25 he overheard one of the "mountain men" named Ricketts say to another unidentified mountain man that "every man, woman and child knew what they were there for, and if they weren't going to do anything they might as well not have come."

Noakes testified to a number of conversations with Caleb Powers before the shooting. He said in one of them Powers told him after they got the men to Frankfort "it would take them about thirty minutes to settle the contest," and "if they didn't they would kill every damned one of them."

Culton testified that he had attended a meeting in the state agricultural building at Frankfort about ten days before the shooting. Caleb Powers, Frank M. Cecil, T. C. Davidson, George Page, H. S. Van Zandt, Hampton H. Howard and other Republican leaders were present. At that meeting, according to Culton, the Republican leaders arranged for bringing the mountain men to Frankfort. Caleb Powers was in charge of the meeting. The quota which each county leader was to contribute was fixed. Culton swore that in the course of the meeting, Powers declared that the undertaking was "serious"; "if anything happened they might all be indicted as conspirators"; "they were burning their bridges behind them"; and "if anyone was killed they might all be blamed for it."

Wharton Golden testified that Caleb Powers told him to go to John Hurst, a postmaster in Harlan County, and tell him to send ten "witnesses" down to Frankfort, "regular mountain feudalists." The witness was also permitted to say, "Everybody knew what the men were there for. They were to go in to the hall and kill off enough Democrats to give us a safe majority."

The evidence was overwhelming as to the roles Caleb Powers, John Powers and Charles Finley played in the recruiting of the army. There was testimony of meetings in Frankfort and Barbourville where the eastern-county Republican leaders assembled and plans were laid. A large number of telegrams which passed between Powers and these associates were produced and received in evidence. These concerned quotas of men to be furnished, places of assembly and arrangements for transportation. Caleb Powers selected the men from Knox County—between 150 and 200. According to most of the testimony, the recruiting officers in the other eastern counties were directed by Powers to select dependable, sober men—men who were used to firearms and would come equipped with revolvers or rifles or both. It was stressed that these should be worn and displayed openly. However, a number of the witnesses testified that the army, when it arrived at Frankfort was a "tough looking," "rowdy" and "threatening" lot.

According to some of the Commonwealth's witnesses, Caleb Powers and his Republican associates intended that the units of the state militia in the eastern counties should play an important supporting role in their general plan. Noakes described a conversation with Caleb Powers about January 22 in which Powers told him that the purpose of bringing a large body of armed men to Frankfort was "to crowd the capitol grounds and give Taylor an excuse for calling out the militia and forcibly holding the grounds and buildings, and to intimidate the election commissioners and the legislature." He added that Powers came to him in November 1899 and induced him to organize a company of militia; that he told him to recruit as many desperate men as the could—men who

would stand and fight if necessary. Noakes did organize a company and was commissioned its captain on November 28, 1899.

John F. Haun, captain of a company of militia in Knox County and a Goebel adherent, testified that Caleb Powers approached him early in January and asked him to turn over his command to his subordinate, Lieutenant Gibson. Haun said he would on proper orders. Powers next asked him to turn over the keys to the armory. The captain made the same reply; he would if he received an official order to that effect. Powers then said that he and his friends were being robbed and he didn't propose to stand for it.

James K. Watkins, captain of a militia company in Whitley County, testified that three or four days before the Goebel shooting John Powers asked him to take his company—in civilian clothes, but armed--to Frankfort. The witness said he refused to go except on formal orders.

David R. Murray, an assistant adjutant general of the National Guard, identified a letter written by Caleb Powers to the adjutant general, dated January 20. In it Powers stated that two companies, one under Captain Watkins and another under a Captain Parker, refused to go to Frankfort unless they received official orders to do so. The letter proceeded:

> We must have these men and guns. We are undertaking a serious matter. . . . Send someone to London and Williamsburg with such orders as will bring these two companies to join us Wednesday night [January 24th]. Do not fail. . . . Captain Haun of one of the companies here refused to deliver us the key of the armory. Give him such orders as will give us the key. Wire me and also write me. Will be there Thursday morning with 1,200 men or more. Arrange board and lodging.

The witness also identified a letter, dated January 22, from John Powers to the same effect.

Culton and Golden testified that Caleb Powers and his associates had planned that, when the mountain army started

trouble, Governor Taylor would declare a state of emergency and call out the militia, which would protect the mountain men against the civil authorities and any organized force which the Democrats might offer.

The "army"—between 1,000 and 1,200 men—arrived in Frankfort at 9:30 A.M. on January 25, 1900. They were marched to the state agricultural building, where they checked their rifles and received badges—provided by Finley and Powers—which bore the picture of Governor Taylor.

Noakes testified that shortly before noon he was told by Finley to assemble the men in the statehouse yard. This was done, and Finley and Captain Stephen S. Sharpe of Lexington addressed them. The speeches were temperate and the meeting orderly. The men were told that in coming to Frankfort they were exercising their right as American citizens to bear arms openly and to petition their elected officers to uphold their choices of state officers as declared by the voters and found by the state election board. A resolution was adopted to appoint a committee to prepare such a petition and present it to both houses of the legislature. After the speeches were over and the resolution was adopted the chairman, Captain Sharpe, declared the meeting adjourned. The men scattered through the grounds and state buildings and the adjacent streets of the town. A few of them got drunk, but there was no disorder.

While Finley was addressing the crowd, John Powers came up to Noakes and said, "Keep close to the building. When Goebel comes along we are going to do the work for him." This, Noakes said, was the first he "realized that assassination was to be done"; he protested against it and hurried out of the crowd, intending to go to the Capital Hotel to warn Goebel. He abandoned this idea because after talking with John Hurst, one of the mountain men, he knew he was being watched and thought his own life was in danger.

In a conversation in the secretary of state's office at Frankfort on the twenty-eighth, Noakes continued, Caleb Powers said he understood Noakes had two men in his company who,

if told that Noakes wanted a certain man killed, would see that the man named was dead the next morning. Noakes asked him if he meant Chadwell and Silas Jones, and Powers said he did. Noakes then said that these two were certainly desperate men who would do well in an open fight, but "he didn't think they would do a thing of that kind."

Culton testified that after the mountain men were brought to Frankfort he had a talk with one of them, "Doctor" W. R. Johnson, in the presence of Youtsey. Johnson said he could kill Goebel by exploding a charge of nitroglycerine in Goebel's room. Neither Caleb Powers nor John Powers was present during this conversation.

According to Wharton Golden, on the evening of the twenty-fifth Taylor, Finley and Caleb Powers decided that room and board could not be provided for so large a number of men and that most of them must be sent home. The several county leaders were told to select ten to fifteen from each unit to stay. Return transportation was furnished for the others, and by midnight all but about 200 had left for their homes. Accommodations were found for those selected to remain, and most of these stayed in Frankfort until after the assassination.

Noakes testified he asked Caleb Powers why the men were being sent home and Powers replied that "Taylor had no backbone" and he (Powers) saw no point in keeping them there and paying their board. Powers also said that the mountain men "had accomplished what they came for"; they were going back to their homes to see that justice was done, and "justice would be done if they had to stand up to their knees in blood." Noakes said he then asked Powers, "How far is this thing going to go?" Powers replied, "We don't need much more time to settle it. When Goebel is dead, that will settle it, and he has not got much longer to live." Noakes sent all of his men home except fourteen or fifteen, and the number retained at Caleb Powers' request included Chadwell and Jones.

Another witness, Patrick McDonald, testified that on the Saturday before the murder he was in the gallery of the house

chamber where an election contest was being heard. After one of the numerous heated controversies which arose in the proceeding he saw two men run down the stairs and heard one of them say, "Come on, boys, get your guns. It's time to begin killing."

Watts, the railroad janitor mentioned earlier, testified—over violent defense objections—to having overheard a conversation in the barbershop in the basement of the executive building. A man whom he was unable to identify had said to a state representative (Judge Lilly) that, if a fight started, they could "kill off a lot of them in a minute and a half, and it would be just the same as killing damned rascals."

Culton testified that on the Saturday before the shooting Governor Taylor sent him with a message to Adjutant General Dixon advising to have his men—the militia—ready to act on an instant's notice.

Two witnesses described direct threats against Goebel made by Caleb Powers. Finley B. Anderson swore that on January 24, the day before the mountain men went to Frankfort, he heard Caleb Powers declare Goebel would never live to be governor. "If we can't get him killed, and it is necessary, I will kill him myself," Powers said. And: "They say he [Goebel] wears a breastplate of something, but it won't do him any good."

Wharton Golden's testimony cited a conversation with Caleb Powers some time before the assassination in which Powers said his idea was to have 200 or 300 men come to Frankfort and stay for a while. Five or six of them would board at the Capital Hotel and stir up a political quarrel and when Goebel came in they would shoot him. Golden said he had a better scheme than that. He knew a man named Ely Farmer who had been saying he would like to shoot Goebel. They could bring Farmer to Frankfort and have enough men to back him up. Farmer would pick a fight with Goebel on the street and kill him. Golden testified further that for weeks before the event the killing of Goebel was everyday "common talk."

Four other witnesses testified to less specific threats which

they heard Caleb Powers make against Goebel: that he "would fight before he would be robbed" and "would go in there and kill every last one of them"; that he "was in favor of an open declaration of war"; and that he had "been elected, and if we cannot get them out any other way, I, as one brave man, will take my gun and go down there and shoot them out." And three witnesses testified they had heard John Powers make various threats against Goebel.

Considerable testimony dealt with actions and statements of Caleb Powers and his brother before the assassination which the Commonwealth contended showed that Caleb Powers either knew of a plot to kill Goebel or intended to commit the deed himself.

Some time in December 1899, according to Noakes, Caleb Powers asked him if he knew where he could get some smokeless-powder cartridges. When the witness said he did not, Powers took some cartridges out of his pocket and asked him if he could get some like them. Again Noakes answered no.

Wharton Golden described an encounter with John Powers in the reception room outside the secretary of state's private office on the day before the shooting. At that time he saw Powers hand a key to a "dark complected man with a dark mustache" and heard him say, "Goebel is going to be killed this morning." Golden said he protested, "That must not be." John Powers replied, "Don't get excited; I gave him the wrong key." On cross-examination Golden testified that Caleb Powers was not close enough to him and John Powers to hear this conversation. Golden said he did not know the man to whom John Powers gave the key and made no effort to find out beyond asking John Powers who he was; John Powers told him he did not know.

The Commonwealth called a number of witnesses who testified to the actions and statements of Henry Youtsey before and immediately after the shooting, and, by showing frequent associations between Caleb Powers and Youtsey, tried to connect Powers with them.

Miss Anna Weist, an employee in the state auditor's office,

said that a few days before the murder she saw Youtsey, much excited, holding a gun in his hand. He told her she had better go home; there was likely to be trouble.

Culton at first maintained he had never talked to Youtsey. But under Campbell's persistent and leading questioning he testified he talked to Youtsey in the office of the commissioner of agriculture some days before the murder. Youtsey showed him some steel cartridges and said he had a way to kill Goebel without being found out—"a pretty slick scheme"—and that was the way to settle the contest. The killing, Youtsey said, could be done from the secretary of state's private office. A man could come in there, raise the window a little, pull down the shade, shoot Goebel with the smokeless-powder cartridges as he approached the capitol, then walk downstairs into the basement and out into the yard. Culton added that Youtsey showed him a key which he said was a key to the secretary of state's private office.

John Ricketts, a second lieutenant in John Powers' Barbourville militia company, related a conversation with Youtsey in the office of the commissioner of agriculture two or three days before Goebel was shot. Youtsey said that he believed the best way to settle the contest was to get Goebel out of the way; that he was ready to put up $100 of his own money toward doing so, and there were ten or twelve others who wanted Goebel out of the way as badly as he did. Youtsey added that his job depended on the contest and, if the party lost, he lost his job.

Lewis D. Smith, custodian of the executive building, said Youtsey came in on the twenty-ninth, all excited, and ordered the men downstairs. Smith asked Wharton Golden what was the matter, and Golden answered, "If our man had been in place, you would have found out, there would have been hell here this morning, but he was out of place and we couldn't place him."

Harry G. Tandy, assistant secretary of state, claimed to have overheard a conversation a week or ten days before the shooting in which Youtsey said, "The damned rascal ought

to be killed." In a later conversation he heard Youtsey say, "I have made up my mind to do it myself."

McKenzie Todd, a private secretary to Governor Taylor and previously a newspaper reporter, testified to several occasions on which he saw Youtsey and Caleb Powers together in the secretary of state's private office. Once he saw Youtsey sitting at one of the south windows of the secretary of state's private office with a single-barrel rifle in his lap. Another time, Todd said, he came into Caleb Powers' private office and found Youtsey there; then Caleb Powers came in and asked Youtsey what he was doing. Powers told Todd immediately afterward that Youtsey was acting peculiarly and he wished Todd would speak to him. The witness told also of going into Powers' private office on the Saturday before the shooting and finding Youtsey there alone. He was sitting staring out of the southwest window with a rifle in his hand. The window was raised about six inches, and the blind was down. Todd asked him what he was doing, and Youtsey said there was trouble out there. Todd said that he did not see any trouble. Youtsey said, "Well, I am not going to start any trouble, but if trouble comes, I am going to be prepared." Caleb Powers came in, and Todd told Powers of his conversation with Youtsey. Both he and Powers told Youtsey it would never do to shoot from that window. Shortly afterward Caleb Powers came to Todd and said Youtsey was trying to get into his office and he didn't want him there.

Wade Watts testified that after hearing the shots he saw Youtsey, very much excited, run down the stairs into the basement and out the door, shouting, "My God! Where is all that shooting?" The witness added that Youtsey ran in a stooped-over position and "seemed to have something under his coat."

Golden testified that on Tuesday the thirtieth, in accordance with an arrangement made the night before, he, Caleb Powers, John Powers and three other Republican office holders took the 9:27 A.M. train for Louisville. It was brought out in cross-examination that when the group left

the secretary of state's office he particularly noticed that Caleb Powers set the Yale-lock catch on his private-office door and pushed against it to see that the door was locked.

The train had reached LaGrange, just outside of Louisville, when the party received word that Goebel had been shot. According to Golden's testimony, the only one who spoke was Caleb Powers, and he said *sarcastically* that it was a damned shame and an outrage. Caleb Powers, John Powers and Golden took a return train at 2:10 P.M. the same day and arrived in Frankfort at 4:20.

Almost every witness called by the Commonwealth was subjected to long, searching cross-examination. Except in the cases of Finley Anderson, Noakes, Culton, Weaver and Wharton Golden, the results were negative.

Under Defense Counsel Tinsley's persuasive examination his fellow townsman Finley Anderson hedged and wavered. He was made to admit that no one other than himself and Caleb Powers was present at any of the conversations he had ascribed to Powers, and that he was in no case certain as to the exact words used.

Major Owens' cross-examination forced Culton to admit that he had been indicted for forgery and charged with embezzlement of $1,000 from the state auditor's office while employed there as a clerk. He acknowledged that, before giving testimony on his application for admission to bail, he had declared to a number of persons that he knew not a single thing that would incriminate Caleb Powers. His explanation of inconsistency between these statements and his direct testimony was that he "did it to avoid trouble."

The cross-examination of Noakes was less successful. He was, however, compelled to admit that he had left Frankfort on January 25, had no direct knowledge of events between that date and the thirtieth, and had no knowledge of any plot to kill Goebel.

Mr. Sims's brilliant cross-examination of Weaver demonstrated beyond a doubt that the barber and organizer was a perjurer. Even before he had been conclusively impeached

by witnesses later called by the defense, it was plainly evident that he had not been in Frankfort on the day of the shooting.

The "star witness" for the Commonwealth, Wharton Golden, was subjected to a devastating cross-examination by Governor Brown. Skillfully Brown established that Golden was a shiftless character, previously indicted for the illegal selling of whisky and for carrying concealed weapons; out of work at the time of the contest over the state offices, he had expected to get some kind of political job from Governor Taylor. Golden made no effort to minimize his role in the alleged conspiracy and said that, if a fight had started in the legislative chamber, he had been "prepared to kill anybody who got in his way." Reluctantly he admitted that Campbell and Arthur Goebel and the Commonwealth's detectives had, since his arrest a few days after the shooting, harassed him almost continuously until he made an affidavit which was the basis for his direct testimony. Campbell, he said, told him he would surely hang or go to the penitentiary for life unless he helped the prosecution convict Powers, but that, if he would tell all he knew, they—Campbell and Arthur Goebel—would use all their influence with the Commonwealth to save him from prosecution.

A number of witnesses—sheriffs, deputy sheriffs and policemen—described the arrest of Caleb Powers on March 10. They had been "tipped off" that he was on the evening eastbound Chesapeake & Ohio train and headed for the eastern mountains. When the train pulled into Lexington it was boarded by a motley crowd of county and city police officers and special "posse" recruits, all armed with drawn revolvers. Powers was well known and readily identified. Dressed in a National Guard uniform, he was in the midst of a group of uniformed militiamen. Like his escorts, he had a regulation Army rifle between his knees, but was otherwise unarmed. Neither he nor the soldiers with him attempted any resistance. He was arrested, forcibly taken from the train and rushed to the county jail. There he was searched. The search discovered, among other things, $1,300 in currency

and a pardon issued by ex-Governor Taylor to Caleb Powers for "alleged complicity in the murder of William Goebel."

The jury was taken to Frankfort to view the scene of the crime, and on July 28 the prosecution rested. Defense counsel presented a formal motion to the Court to direct the jury to return a not-guilty verdict. It was overruled without argument, and Powers commenced his defense.

Powers' counsel, Judge Faulkner, outlined the case for the defense and then, with good trial strategy, Caleb Powers took the stand as the first witness. Under the direct examination of Governor Brown, Powers told his story.

He denied knowing either Holland Whittaker or James Howard. He had never met Berry Howard until after the legislative contest started. He had never known Youtsey until after the election when Youtsey, as a notary public, swore him in as secretary of state. Their contacts since then had been casual and infrequent. He had seen Youtsey hanging around the reception room and, after twice finding him in his private office, had asked McKenzie Todd to tell him to stay out of the office. He denied all the incriminating conversations and statements attributed to him by Noakes and Finley Anderson.

As to Culton's testimony of the conversation in the agricultural building when the plans were laid for bringing the mountain men to Frankfort, Powers admitted saying that what they were about to do was dangerous and, if the Democrats got wind of it, they might dynamite the railroad bridges and blow up the trains. He emphatically denied making any of the other statements attributed to him by Culton.

Powers denied ever having told Wharton Golden to bring "regular mountain feudalists" to Frankfort, on the contrary, he had told him and all the other county leaders to bring only good, reliable, sober citizens. He had never discussed with Golden the possibility of having some picked men start a political quarrel in the Capital Hotel and, in the course of it, kill Goebel; nor had Golden ever suggested to him that a man named Ely Farmer could pick a quarrel with Goebel and

kill him. He had never seen his brother John give any man a key to his private office, and had never overheard any conversation between Golden and John Powers regarding a key.

Powers affirmed that when he first heard of the attempt on Goebel's life he had exclaimed that it was an outrage and a shame, but he vehemently denied that he had spoken the words sarcastically; he was never, he said, more serious in his life.

He admitted having had a conversation with John D. Black, the Barbourville banker, but denied he had said that the purpose of bringing the mountain men to Frankfort was to "intimidate" the legislature.

Powers' reply to the testimony of Commonwealth witnesses Captain Haun and Assistant Adjutant General Murray was not convincing. He admitted having had a conversation with Captain Haun, but his account differed from the captain's. He had suggested, he said, that Haun's company might be called to Frankfort by Governor Taylor to quell any disturbance that might arise there in connection with the contest; and since this might prove embarrassing to a Goebel man, it might be well for him to turn his command over to Lieutenant Gibson. Powers said that Haun agreed to turn over his command, but later changed his mind. The same explanation, said Powers, was applicable to his and his brother John's letters to the adjutant general.

Powers admitted his participation in bringing seven or eight hundred mountain men to Frankfort. They were asked to come because of a widespread and persistent rumor that the Democratic majority on the legislative committee had determined, in spite of the evidence and the decision of the election board, to unseat Governor Taylor and the other duly elected state officials and forcibly eject the Republicans from their offices. It was thought that large delegations of citizens, petitioning for a recognition of the registered will of the majority of the voters of Kentucky, might deter the committee from carrying out its contemplated illegal and unjust purpose.

The men had indeed borne arms. They carried them

openly, as was their constitutional right. They wore identifying badges furnished by Powers and his associates. There was nothing illegal in that, said Powers. In an orderly meeting at Frankfort the delegations adopted resolutions to be presented to both houses of the legislature. That, surely, said Powers, was their right. When the protest meeting was over, most of the men—all but about 150 or 200 of them—returned to their homes. Those who remained did so of their own volition, without suggestion from Powers or, so far as he knew, from any of his associates.

At no time had Powers threatened to kill Goebel or to resort to violence. He had frequently declared that he and his associates had been fairly elected to their offices and would fight the crooked attempts of the Democrats to unseat them. By "fight" he meant only a resort to legal processes.

Besides himself, only the assistant secretary of state and the janitor had keys to Powers' office. He had with him the keys to both doors of his office when he went to Louisville on Tuesday; if anyone else had a key, it had been obtained without his knowledge. He remembered distinctly that before leaving the office on Tuesday he bolted *from the inside* the door which opened into the reception room. And he fixed the catch of the Yale lock on the hall door and pushed against it to make sure it could not be opened from the outside.

Powers explained his reasons for attempting to flee. He was at Louisville, seventy-five miles from Frankfort and just across the river from Indiana, when he heard that Goebel had been shot. He could then have easily escaped into Indiana, had he been guilty. He did not do so. On the contrary, he returned immediately to Frankfort. With the consciousness and confidence of innocence he had stood his ground and done his best to aid the Commonwealth in clearing up the mystery of Goebel's assassination. He had spoken to John and William Sweeney and Grant Roberts, employees in the same office with Youtsey, and told them of Youtsey's suspicious conduct before the shooting. He had called in detectives, given them the same information and urged on them

the desirability, as a matter of justice to those under suspicion and for the maintenance of order, of discovering the guilty party or parties as quickly as possible. He had replied to all the suspicions leveled at him. In spite of all this, public feeling against him had been so stirred up by his enemies that by March 10 he felt that his life was in danger and that, if arrested, he could not hope to obtain a fair trial in Franklin County.

It was for the same reasons, he said, that he had sought to protect himself by obtaining a pardon from Governor Taylor. The pardon, he pointed out, expressly recited that he was innocent and was given him in order that he might not be unjustly accused and arrested.

Powers closed his testimony with an earnest declaration that he had no knowledge of any conspiracy to kill Goebel and had not participated, directly or indirectly, in the assassination.

Campbell, the special prosecutor, cross-examined Powers. The ordeal lasted nearly three hours. It was relentless and vicious and would have wrecked anyone not possessed of nerves of steel. How did Powers stand up under it? Our only source of information is contemporary newspaper accounts. The pro-Goebel Louisville *Courier-Journal* says that at many points Powers was confused, hesitant and evasive and that he left the stand a thoroughly beaten man. On the other hand, the Louisville *Evening Post,* an anti-Goebel paper, declared Powers came through with colors flying. The account in that paper was written by the late Irvin Cobb, then a cub reporter on one of his first assignments. It is in the best Cobb tradition:

The expectation of a further exhibition of Campbell's tactics helped to swell today's crowd. People here have learned that in the art of injecting argument into examination, of veiling innuendoes, of inference and insinuation under the guise of questions, and of putting words into other men's mouths, Campbell is a grand master. But not one inch did he shake Caleb Powers in the long and severe cross-

examination which went on during the forenoon. He never once lost his head, nor did he allow Campbell to trap him into admissions which he did not make. . . . Throughout the morning Powers remained cool and calm, and his replies seemed to breathe sincerity and truth.

The defense called more than sixty witnesses to corroborate and support Powers' testimony. Its principal effort was directed to discrediting Wharton Golden, Culton, Noakes and Weaver—"the four invincibles," as they were dubbed by some of the pro-Goebel newspapers.

Seven witnesses, most of them from Golden's home town, Barbourville, took the stand and swore that on several occasions immediately after the shooting Golden had declared Powers had had nothing to do with it and was "as innocent as an unborn babe." After Golden had been arrested and released, said these witnesses, his attitude changed. He then charged Powers with complicity in the murder, but said that he, Golden, was "well out of it." One witness said Golden told him that what he had done—agreeing to testify for the Commonwealth—was "for his own protection." Other witnesses—one of them Golden's brother-in-law—testified Golden told them he expected to get $5,000 of the reward money for helping the Commonwealth convict Powers and other defendants. Two witnesses claimed to have seen Golden shortly after his release in a barbershop in Barbourville; he "flashed a big roll of bills" and said there was "a $10,000 reward afloat" and he was "in on it."

Noakes had testified that on January 25, immediately after he had learned from John Powers that "assassination was to be done," he talked to John Hurst. Hurst took the stand and swore that he had not seen Noakes on the twenty-fifth. Two other witnesses disputed Noakes's statement that the men he recruited for his militia company were feudists and desperate characters.

Two witnesses from Grayson Springs, a little town some ninety miles from Frankfort, swore positively that Commonwealth Witness Weaver was in Grayson Springs during the

entire day of January 30 and on the evening of that day installed a new lodge of the fraternal order for which he was an organizer.[11]

T. C. Davidson, a Republican district leader who was present at the meeting in the office of the state agricultural commissioner a week or ten days before the shooting, contradicted Culton's testimony that Powers told those assembled that their bringing the mountain men to Frankfort was a "serious undertaking," that "they were burning their bridges behind them," that "if anything happened they might all be indicted as conspirators" and "if any one was killed they might all be blamed for it." Another witness swore that Culton told her his job at this meeting was to arrange transportation for the mountain men, and he had not participated in or heard any of the discussion between Caleb Powers and the other Republican leaders.

Representative W. H. Lilly emphatically denied the testimony of Watts, the railroad janitor, that a man had said to him in the executive-building-basement barbershop that "if a fight started they could kill off a lot of them in a minute and a half, and it would be just the same as killing damned rascals."

The defense made a serious effort to convince the jury that the shot which ended Goebel's life was not fired from the office of the secretary of state. A dozen or more witnesses who were either in the executive building or the statehouse insisted that they heard the shots and the sounds did not come from the secretary of state's office but from "between the State House and the Executive Building" and "higher up" on the *third* floor. A number of these also swore that immediately after the shooting they ran outside and noticed that one of the windows on the third floor of the executive building was raised. One of them testified that smoke was coming out of that window and people below in the statehouse grounds were

[11] At the instance of the defense Weaver was arrested and indicted for perjury. After a trial and disagreement he was released on his own recognizance, and further prosecution was abandoned.

pointing to it. This witness added that about an hour and a half later he went to the third floor of the executive building and inspected the office containing the window. It was, he said, directly in line with the spot where Goebel fell. In front of the window were two wooden boxes, one piled on top of the other so that the top of the uppermost box was level with the window sill. (It was later argued by the defense that these boxes might have been used as a "rifle rest" for the gun that shot Goebel.)

An engineer and surveyor, who had taken sights and made measurements from the sills of the two windows in the secretary of state's private office to the place where it was claimed Goebel was struck and to the hackberry tree in which it was claimed the steel-jacketed bullet was found, testified that a shot fired from a gun held on either window sill could not have gone through Goebel's body and then hit the tree.

To further bolster the contention that the shot had not been fired from Powers' private office, the defense produced three witnesses who stated that after the shooting they had tried to get into the office and found both doors locked. When they succeeded in getting in, both windows were down, and there was no smoke or smell of smoke in the room. These witnesses admitted that two guns were lying on a table in the room—one a Winchester, the other a Marlin. None of them examined the guns.

A score of witnesses took the stand to refute the Commonwealth's contention that the mountain men were armed desperadoes brought to Frankfort by Taylor, Powers and Finley for the purpose of intimidating the legislature, and, that failing, to resort to any means to keep the Republicans in office. These witnesses testified that Powers' orders had been to recruit only honest, decent, sober men who were representative of their communities, and that the men selected met these qualifications.

Witnesses confirmed the testimony of Powers and the prosecution's witness Noakes that there was no offer of violence from the mountain men on the twenty-fifth or at any

later time. The meeting held in the statehouse grounds was orderly, they said, and the speeches of Finley and Sharpe did not counsel violence but advised the adoption of a formal petition to be presented to the sitting legislative committee.

The Commonwealth had sought to establish that two companies of militia arrived at the scene of the shooting within ten or fifteen minutes after the first shot was fired, and that circumstance proved they had received their marching orders before the assassination. To counter this evidence the defense called the former adjutant general, the two captains of the militia companies and three others who testified there had been no such arrangements. The orders summoning the militia from the near-by arsenal were not received at the adjutant general's office until after the shooting, and the troops did not arrive on the scene until twenty-five or thirty minutes after Goebel had been fired on.

Former Adjutant General Collier denied there was any conflict with the civil authorities after the shooting or any interference with the efforts of the civil authorities to investigate the crime and arrest suspects.

A half-dozen witnesses testified that immediately after the shooting a large crowd—variously estimated at 150 to 300—gathered in the statehouse square and that its mood was menacing. Threats to "blow up the executive building" and to "wipe out the Republicans once and for all" were heard. These witnesses added that this "threat of anarchy" continued for days afterward and serious trouble was averted only because of the alert services of every available member of the militia.

A number of witnesses corroborated Powers' testimony that the purpose of the trip to Louisville the morning of the thirtieth was not to provide Powers and his brother with an alibi for the place and precise time of the killing but to arrange with Republican leaders in and near Louisville for bringing other delegations of protesting citizens to Frankfort from the western sections of the state. These testified that telegrams

were sent from the train to various local party chairmen to meet in Louisville for conference. Two witnesses said they received such telegrams on the thirtieth. When the news came that Goebel had been shot the planned meeting was abandoned.

Two of the men who were with Powers when he received word of the shooting testified that he exclaimed that it was a shame and an outrage and that he did not make the statement sarcastically. Everyone present, they said, genuinely deplored the event.

Additional testimony implicating Youtsey came from two witnesses. Stone, the governor's secretary, said that after the shooting Youtsey came into the reception room carrying a rifle. Walter L. Day, a former Republican state treasurer, described an occasion a few days before the assassination when he found Youtsey in Powers' private office, looking out of one of the south windows, the sash of which had been raised. He said he did not report the fact to Powers.

At 10:40 A.M. on August 10 the defense rested, and the Commonwealth commenced its rebuttal. Thirty-five witnesses took the stand. Their evidence was largely in the nature of impeachment—testimony that designated witnesses for the defense had openly declared before the assassination that Goebel would never live to be governor and after his death had said they would aid Powers and the other indicted men in any way they could. Several witnesses from Barbourville disputed the statements of defense witnesses that Wharton Golden had exhibited a large roll of bills and boasted it was part of the reward money. This was supplemented by the testimony of the assistant state auditor of public accounts that, to date, only $5,000 had been paid out of the fund, and that had gone to J. H. Lewis, chairman of the reward commission and a man of unassailable reputation, for the commission's current expenses. According to these records, not a dollar of the reward money had been paid to Wharton Golden or Culton. Additional witnesses disputed the defense testimony that after the shooting there was an angry mob in the state-

house square which threatened the lives or safety of the Republican office holders.

After brief examination of two relatively unimportant witnesses called by the defense in surrebuttal the evidence was officially closed.

The most that can be said for Judge Cantrill's charge to the jury is that it was consistent with the partiality he had shown the prosecution throughout the trial. The sole result of the dozen or more pertinent and proper instructions tendered by the defense was the inclusion in the charge of a statement that the defendant could not be convicted unless every fact and circumstance necessary to constitute his guilt had been proved to the satisfaction of the jury beyond a reasonable doubt.

The Court refused to charge the jury that the defendant was presumed to be innocent until his guilt was proved beyond a reasonable doubt; or that the defendant could not be convicted on the uncorroborated evidence of an accomplice and that such corroboration had to come from someone who was not also an accomplice; or that Powers could not be held guilty of murder because of having brought the mountain men to Frankfort unless that act was in furtherance of a conspiracy to kill Goebel and Goebel was killed by one of the mountain men in furtherance of such a conspiracy.

The lawyers' summations lasted twenty-four hours. The weather was blistering-hot, but court officers and spectators occupied every available foot of space in the ill-ventilated little Georgetown courtroom.

There were ten separate arguments: Hendrick, Bradley, Golden, Campbell and Franklin for the Commonwealth; Sims, Denny, Tinsley, Owens and Brown for the defense. Every scrap of evidence in the case was analyzed and discussed. Witnesses were assailed and defended. Impeachments, contradictions, probabilities, interests, motives, consequences—all were hashed and rehashed to the point of almost literal repetition. Whatever else might be said in criticism of the trial, the charge could not be made that either side had been deprived of the fullest opportunity to argue its case.

From both sides there were logical analysis, cogent reasoning, denunciations, appeals to passion and prejudice, brilliant and picturesque oratory and bitter exchanges of personalities.

After Commonwealth Attorney Franklin had had the last word the jurors arose from their benches and retired to the jury room in the custody of a deputy sheriff.

In just twenty minutes they made known to the officer that they had agreed. Slowly they filed back into the jury box. Their solemn expressions foretold their verdict: guilty as charged, with the punishment fixed at imprisonment for life in the state penitentiary.

The defense attorneys entered a motion for a new trial. It was a mere formality. Handcuffed and heavily guarded, Powers was returned to the Louisville jail to await the determination of an appeal to the highest court of the state.

James B. Howard, charged as a principal in Goebel's murder, was next on the prosecution's list. Howard was the assessor of Clay County and an active Republican partisan. At the time of his trial he was thirty-four years old, married and had three children, the youngest of them seven months old. On arraignment he had pleaded not guilty. He was without financial means, but a committee of prominent Republicans provided him with defense funds and able counsel. On September 7, 1900, his case was called for trial at Frankfort. Judge Cantrill presided.

The selection of the jury followed the precedent set in the trial of Powers: a special venire heavily weighted with Goebel Democrats and challenges by the Commonwealth of the few Republicans who found their way into the jury box produced a trial panel of twelve stalwart Goebel Democrats who swore they could give the defendant an impartial trial.

The prosecution made out a fairly plausible case against Howard. The witnesses who had testified in the Powers trial respecting Youtsey's actions and statements repeated their former testimony. Four witnesses testified that a few seconds after the shooting they saw Howard, or a man closely resem-

bling him, standing on the west steps of the executive building with a gun in his hands. Two others swore that shortly afterward they saw Howard run in a northeasterly direction to the north end of the capitol grounds and leap over the enclosing fence. All these stated that the man they identified as Howard had a heavy, stubby black mustache.

The remainder of the evidence against Howard consisted of the testimony of Culton and four others who swore to declarations they heard Howard make before and after the shooting.

Culton testified that in the afternoon of the day of the assassination Howard showed him some forty-five-caliber pistol cartridges which shot smokeless powder. Howard told him that Goebel would die; "if there had been something or other on the cartridge he would have died immediately, but he would die anyhow." Howard then pointed to a tree on the statehouse grounds and said, "Some guys don't understand. If you want to make a dead shot at a moving object, take a sight on a tree, and when the object passes you will make a dead shot every time." The Commonwealth made much of this statement in connection with its other testimony that Goebel, at the time he was shot, was directly on a line drawn from the window of the secretary of state's private office to the hackberry tree where the steel-jacketed bullet was found.

James Stubblefield, a deputy assessor of Clay County under Howard, testified that a few days before the shooting Howard told him he got letters from Governor Taylor "every once in a while." A few days after the shooting he had a talk with Howard in which Howard said, "You know, whenever I look through the sights of my pistol or gun I always get meat or money—one; and this time [referring to the time he had recently been at Frankfort], by God, I have got both." Stubblefield said that in a later talk with Howard he recalled this conversation and said, "Jim, do you mean to say you killed Goebel?" And Howard answered, "By God, I mean what I said."

Robert Allen related a conversation with Howard shortly

after the murder in which Howard said, "I know the identical man that did it," meaning the killing of Goebel.

Another prosecution witness, John L. Jones, stated that the morning after the shooting Howard told him that Goebel had been killed by a "dead shot" and that whenever he, Howard, shot, he shot to kill. This witness was corroborated by his son, who described a similar conversation with Howard a few days later.

Howard took the stand in his own defense. He swore that he did not shoot Goebel and had no participation in or knowledge of any plot to kill Goebel or anyone else. He denied ever having met or known Caleb Powers, John L. Powers, Governor Taylor, Berry Howard or Henry Youtsey before the shooting. He had come to Frankfort, he said, on the advice of his attorney and friends, to seek a pardon from Governor Taylor for the killing (which he claimed was in self-defense) of a man named George Baker. He had come to Frankfort alone, not in company with any of the mountain men. He had not mingled with the mountain men after he got there. At the time of the shooting he was in the Board of Trade Hotel, a quarter of a mile from the executive building. On January 30, and for a year previous, he had not worn a mustache but was clean-shaven. He specifically denied each and all of the conversations and statements attributed to him by the Commonwealth witnesses.

Special Prosecutor Campbell cross-examined Howard. He had told the jury in his opening statement that Howard had been indicted in Clay County for the murder of George Baker and had shot and killed another man named Tom Baker. (Such a statement would have been deemed flagrant error in most jurisdictions.) Seemingly indifferent, however, to the consequences of error in his trial record, Campbell made the alleged Baker killings the keynote of his cross-examination. In his most abusive manner he shouted at Howard, "Was not he [George Baker] an old man with his hands up who begged for God's sake to spare his life?" And, referring to Tom Baker: "Did you not from a curtained win-

dow in the home of Beverly White, in the town of Manchester, Kentucky, ambush and shoot Tom Baker in the presence of his wife and infant child?" The objections and protests of defense counsel fell on deaf ears. The defendant was ordered to answer. He answered both questions "No." He had been compelled to shoot George Baker in self-defense, he said, and he had had nothing whatever to do with the shooting of Tom Baker.

Howard called a number of supporting witnesses. Two corroborated his statement that he was in the lobby of the Board of Trade Hotel at the time of the shooting. A dozen or more persons swore that on January 30, and for some time before that, he had not worn a mustache. Records were produced to show that Commonwealth Witness John L. Jones had been convicted of manslaughter and served a term in the state penitentiary. Several witnesses took the stand to swear that Commonwealth Witness Stubblefield's reputation for truth and veracity was bad and they would not believe him under oath.

In rebuttal the Commonwealth produced three witnesses who swore that neither Howard nor his two witnesses were in the lobby of the Board of Trade Hotel when the shooting of Goebel occurred.

Judge Cantrill's charge and the manner of its delivery unmistakably revealed his bias. And Campbell's argument against Howard was vicious. Howard, he said, was a desperate character, a purchasable gunman, a feudist who had committed three murders and gone unpunished.

Robert Franklin, the elected prosecutor of Franklin and nominally leading counsel for the Commonwealth, had been taken ill during the trial. In his absence his principal assistant, Mr. Williams, closed the summations with this statement: "I am commissioned by Robert Franklin to say to the jury that he is in thorough accord and sympathy with the prosecution; that he thinks the defendant is guilty and hopes the jury will hang him higher than Haman."

The prosecution's hopes were fulfilled. After three hours

and ten minutes' deliberation the jury returned a verdict of guilty and fixed Howard's punishment at death. Howard's motion for a new trial was promptly overruled, and his attorneys proceeded at once to perfect his appeal to Kentucky's court of last resort.

The next defendant marked for trial in the prosecution's program was Henry E. Youtsey, also indicted as a principal. On October 8, 1900, his case was called for trial in the circuit court of Scott County, sitting at Georgetown. Judge Cantrill presided. The examinations and mutual challenges of the hundred or more veniremen summoned by a Democratic sheriff as a "special panel" ultimately produced the Commonwealth's undisguised objective: a jury composed of Goebel Democrats.

Youtsey at the time of the shooting was twenty-nine years old. He was a native—and until he removed to Frankfort in 1898 had been a resident—of Newport in Campbell County, Kentucky. After a common school education he took a course in a business college, where he learned shorthand and typewriting. He was extremely active in minor capacities in the Republican organization in Campbell County and in 1898 obtained a job at Frankfort as a stenographic secretary to Samuel H. Stone, the state auditor of public accounts. With the apparent victory of the Republicans in 1899 he continued as stenographer to the new Republican incumbent of the state auditor's office.

The Commonwealth made out a strong case against Youtsey. Almost all the witnesses who had testified in the trials of Powers and Howard appeared as Commonwealth witnesses against Youtsey.[12] In addition there was new testimony of the most damning character. Employees of the Adams Express Company and others proved that a package containing a supply of smokeless-powder cartridges which fired steel bullets was delivered to Youtsey on January 22. The postmaster of Frankfort identified an application by Youtsey for a money

[12] George F. Weaver and Noakes were not called.

order—which the postmaster issued and gave Youtsey—payable to the ammunition company in Cleveland which sent Youtsey the express package.

Another witness testified that immediately after the shooting, while Goebel was being picked up from the ground, he saw Youtsey, Berry Howard and James Howard on the west steps of the executive building. The two Howards had revolvers in their hands. A witness who knew Youtsey intimately stated that immediately after the shots were fired he saw Youtsey run down the stairway and through the basement in what he described as a "panic stricken condition."

The sensation of the trial occurred while Arthur Goebel, brother of the murdered governor, was on the stand. Arthur Goebel had taken an active part in trying to run down his brother's assassins, and he faced the jury with the determination of an aggrieved kinsman bent on bringing down on the defendant the law's severest penalty. His striking resemblance to his deceased brother lent a dramatic quality to his clear and incisive statements. The witness, after identifying himself, stated that he had visited Youtsey in the Frankfort jail and had a conversation with him about the killing.

What then happened must be reconstructed from the record and contemporary newspaper accounts. When the witness said Youtsey had talked to him, Youtsey sprang to his feet, evaded his guards and rushed toward the witness stand, shouting, "That's untrue. I hope God may kill me if I ever said a word to that man or he to me. I never heard his voice and he never heard mine."

"His fists were clenched," newspaper readers were informed. "His eyes glittered like balls of fire." Judge, lawyers and deputies ordered him to sit down.

"I will not sit down," cried Youtsey. "There is no blood on my hands, not a particle. I want everybody to see it."

As he sought to reach the witness the deputies and lawyers grabbed him and tried to restrain him. In the struggle "chairs were overturned; papers were scattered on the floor, and the courtroom looked like a hurricane had struck it." The half

dozen or more people who grappled with Youtsey finally succeeded in pinioning his arms behind him and throwing him to the floor. He fainted, and Mrs. Youtsey threw herself on his body and shouted at the judge and Commonwealth lawyers, "Now you've done what you set out to do. You've run him crazy. I hope you're satisfied."[13] Youtsey lay on the floor, apparently lifeless.

Youtsey's lawyers moved for an adjournment, and the Court continued the case until the following morning. Then it was reported by three doctors called in attendance that Youtsey was "temporarily deranged." The trial was not resumed until the thirteenth. During the remainder of the trial the defendant lay on a cot placed either in the courtroom or at the door of the jury room.

Arthur Goebel resumed the stand. Youtsey, he testified, had told him this story: On the Monday before the murder Youtsey talked with "Tallow Dick" Combs, who told him he was ready to do the shooting. He then went to Caleb Powers for the key to his office, and Caleb Powers sent him to John Powers, who gave him a key. Next Youtsey went to Governor Taylor and told Taylor that Dick Combs was ready to do the shooting. Taylor said, "You ought not come to see me about this. I have been expecting this to be done for some time, but I object to having a Negro do it. It is too important a piece of work. Combs may be a spy, and he may betray us." Youtsey saw Taylor again on Tuesday morning and told him Jim Howard was there. Taylor walked up and down the floor and said, "What do you think, Youtsey? If Goebel is killed, do you think that I can hold my office?" Youtsey replied that he thought if Goebel were out of the way, the contest would be settled and Taylor could hold his office. Youtsey finally said to Taylor, "It's up to you to decide whether it is to be done or not," and after some hesitation Taylor said, "Well, tell them to go ahead. If it is necessary, I can send the man up to the mountains with a squad of sol-

[13] Narrative quotations are from the Louisville *Courier-Journal*, October 8, 1900. The statements of Youtsey and his wife are taken from the trial transcript.

diers, and if necessary I can pardon him." Youtsey left the governor's office and told Berry Howard, James Howard and "Tallow Dick" Combs to go up into the hall of the executive building while he got the cartridges. He met James Howard at the outside door to Caleb Powers' private office, unlocked it, gave Howard the cartridges and left. Youtsey could not tell who fired the shot. He said he obtained the cartridges from Cincinnati and gave the name of the concern he bought them from; they were cartridges which would fit either a Winchester or a Marlin rifle.

Arthur Goebel was subjected to a vigorous but ineffective cross-examination. The jurors smiled indulgently whenever the witness scored off the examiner, and the courtroom crowd manifested its complete sympathy by frequent bursts of applause.

Youtsey's defense was brief. Several witnesses, some of whom had testified in the Powers trial, were called to impeach Culton and Golden. Others testified that at the time of the shooting Combs, with another Negro named Hockersmith, was in the adjutant general's office. Several testified that immediately after the shooting they particularly noticed that neither of the windows in Caleb Powers' private office was raised. James Howard took the stand and swore he had never met Youtsey and did not know him.

Youtsey's attorneys tried in vain to question him. He lay on a cot, his eyes closed, apparently oblivious to what was going on around him. Question after question was put to him. There were no answers. His lawyers finally gave up the attempt.

The Commonwealth called a half-dozen witnesses in rebuttal, the Court read the jury its instructions, there were six hours of argument, and the case went to the jury. After but a few minutes' deliberation the jury returned a verdict of guilty and fixed the defendant's punishment at imprisonment for life in the state's penitentiary.

Within a day or two after the verdict Youtsey made a com-

plete recovery. He later admitted he had thrown a fit "because it seemed to be the best thing I could do." It was a stellar act and probably saved his life. He did not appeal and was taken to the penitentiary in irons to commence the serving of his sentence.

On March 28, 1901, the Kentucky court of appeals handed down its decisions on the appeals of Powers and Howard. Both men, and Powers particularly, were beneficiaries of a recent change in the political complexion of the court. In a judicial district election a Republican had won over a Democrat, and the court of appeals was now composed of four Republicans and three Democrats. The reconstituted tribunal by a vote of four to three reversed both cases and remanded them for new trials.

In the Powers case the Republican majority found cause for reversal in the lower court's erroneous rulings on the admission and exclusion of evidence and the giving and refusal of instructions.[14]

In the Howard case the court was unanimous in its opinion that the statement of Assistant Prosecutor Williams in his closing argument that the absent prosecutor, Robert Franklin, was in sympathy with the prosecution, thought the defendant guilty and hoped the jury would hang him higher than Haman was prejudicial error which required a reversal of the judgment and a new trial. The Republican majority of the court also held that the lower court's ruling permitting Special Prosecutor Campbell to cross-examine Howard as to the details of the Baker killings was highly improper and, of itself, would necessitate a reversal.[15]

When the decisions of the upper court in the Powers and Howard cases were published the prosecution was in the midst of preparing its case against another alleged conspira-

[14] *Powers* v. *Commonwealth*, 110 Ky. 386, 22 Ky. L.R. 1897, 23 Ky. L. R. 146, 61 S. W. 735.

[15] *Howard* v. *Commonwealth*, 110 Ky. 356, 22 Ky. L. R. 1845, 61 S. W. 756.

tor, Captain Garnett D. Ripley. Ripley had been separately indicted at the January 1901 term of the circuit court of Franklin County—nearly a year after the murder.

Ripley, forty years old and married, lived on his own property a short distance from Eminence, about thirty miles northwest of Frankfort. He was an ardent Republican and had taken an active and somewhat noisy part in the 1899 campaign. He had completed the organization of a local company of militia with himself as captain shortly before or during the gubernatorial contest. On the evening of January 30—after the assassination—he received a telegram from the adjutant general ordering him to report to Frankfort immediately with his company. He and his men arrived at the capital in the early morning of the thirty-first. They were stationed at the armory for three or four days and then assigned to guard duty at the executive mansion. He was relieved of that assignment about the middle of April and on the orders of the adjutant general, newly appointed by Governor Beckham, his company was mustered out and disbanded.

It was rumored and charged in the Democratic press that Ripley had knowledge of facts which, if he would tell them, would reveal Taylor's connection with the assumed conspiracy. The Republican papers countered this with the charge that Ripley had been arrested, just as Wharton Golden, Culton, Noakes and others had been, with the idea that he could be intimidated and, in exchange for a promise of immunity, made to testify to suit the prosecution's purposes.

If this was the expectation of the Commonwealth attorneys, they were doomed to disappointment. Not only would Ripley not talk, but he defied his accusers and demanded an immediate trial.

Although the prosecution called more than sixty witnesses in the trial of Ripley, the aggregate was an extremely flimsy case which any judge in normal circumstances would have taken from the jury by a directed verdict. Most of the witnesses who had testified in the Powers, Howard and Youtsey trials were called. Their testimony in no way implicated

Ripley. A half-dozen other witnesses told of Ripley's activities in organizing a company of militia, and of his being ordered to Frankfort by Governor Taylor after the shooting. Five witnesses testified that before the assassination they had heard Ripley declare that Goebel was a son of a bitch and ought to be killed.

Ripley took the stand in his own defense and denied making any threats or inflammatory statements against Goebel. He said he did not learn of the shooting until the afternoon of the thirtieth at Eminence. Before the assassination he had never heard of James Howard, Berry Howard, Henry Youtsey, Holland Whittaker, "Tallow Dick" Combs, Mason Hockersmith, Wharton Golden or W. H. Culton, and had met Powers only once at a political meeting where Powers made a speech.

Despite the weakness of the case, the Commonwealth's prosecutors argued vigorously for the conviction of Ripley. This was too much to ask even from an all-Goebel jury. After a comparatively brief retirement it returned a verdict of not guilty.

Since the conclusion of Powers' first trial the prosecution's case had been weakened by some rather startling developments. Two of the principal witnesses against Powers—Finley B. Anderson and Robert Noakes—publicly repudiated their testimony. Anderson made an affidavit in which he swore that the testimony he had given on the trial concerning threats Powers had made against Goebel was false; the words had been put into his mouth, he said, by Special Prosecutor Campbell and Arthur Goebel. He added that he had received various sums of money from Campbell and Arthur Goebel, aggregating $300, and that he had frequently seen Arthur Goebel give money to Wharton Golden.

Noakes's affidavit repudiating his testimony was even more sensational. Noakes declared he was in Norton, Virginia, when he learned that Goebel had been killed. Several days later he read in a newspaper that he was suspected and was

likely to be arrested. He hired an attorney, who immediately got in touch with Special Prosecutor Campbell. The attorney reported that he had fixed everything up with Campbell, and if Noakes would do exactly as Campbell wanted him to do, he would not be prosecuted. Then, said Noakes, he was arrested. After three days in jail he was released on a bond provided for him and was kept under the watchful eyes of trailing guards until Powers' case was called. What he had sworn to against Powers, he said, was false. Powers was innocent, and Noakes had told Campbell so when they first talked about it. Before the trial Noakes had been plied with liquor and rehearsed in the story which Campbell had concocted for him to tell on the witness stand.

The Second Trial of Caleb Powers

On October 8, 1901, at Georgetown in Scott County, Caleb Powers was again placed on trial for his life.

The first move of Powers' attorneys[16] was a motion, supported by vigorously worded affidavits, to compel Judge Cantrill to vacate the bench in favor of a neutral and fair-minded judge. The affidavits charged that Cantrill was an ardent Democrat, had been a close personal friend of William Goebel and had publicly boasted of his connection with the trials and the results of the prosecution of Powers, Howard and Youtsey. It was charged further that Powers' conviction in his former trial had been brought about largely by Cantrill's erroneous and unjust rulings, that the court of appeals had set aside the conviction because of those rulings, and that Cantrill, in a recent direction to a Franklin County grand jury, had made a "stump speech" of abuse in which he had bitterly attacked all those who had been accused of the murder of Goebel or were supposed to have condoned it.

16 There were changes in the legal representation on both sides. B. B. Golden had withdrawn from the prosecution's staff. Messrs. Brown, Denny and Tinsley had been replaced by ex-Judge John R. Morton of Lexington, James B. Finnell of Georgetown and John W. Douglass of Owentown.

Judge Cantrill heard the motion and, to quote a contemporary newspaper account, "followed his set practice—he scowled and overruled." He declared that he would try the case and ordered the lawyers to proceed with the impaneling of the jury.

Despite the criticism of the court of appeals, the prosecution, with Judge Cantrill's help, pursued the same tactics that had been so effectively employed in the selection of the previous Goebel murder juries. Of 368 veniremen summoned, only eight were Republicans. This despite the fact that forty-five per cent of the voters of Scott and Bourbon counties, from which the jurors were summoned, were Republicans. The eight Republicans were speedily eliminated by the Commonwealth's challenges. The outcome was as designed—a jury of twelve declared Goebel Democrats.

The evidence followed closely the pattern set by the earlier trial. Almost all the prosecution's witnesses who had testified at the first trial—except Weaver, whose perjury had been established, and Anderson and Noakes, who had repudiated their former testimony—took the stand and repeated their earlier statements.

Powers again took the stand in his own defense and reiterated the testimony he had given at his first trial.

George Page—named by Culton as having been present at the meeting in the agricultural building and having heard Caleb Powers say that what they were doing was dangerous and that, if anything happened, they might all be indicted as conspirators—corroborated Powers' other witnesses that he had made no such statements.

Three witnesses swore that Steffy, the messenger boy who had testified for the Commonwealth that immediately after the shooting he saw a gun sticking out of a window in the secretary of state's private office, was in the telegraph office and not at the capitol at the time of the shooting.

Three doctors who had waited on Goebel but had not previously testified gave their opinions that, judging by the location and direction of the bullet wound that killed Goebel, the

shot could not have been fired on a line from the window in the secretary of state's office to the hackberry tree in which the bullet was found.

James Howard took the stand and repeated the testimony he had given on his earlier trial.

The State's rebuttal was brief and, as in the former trial, consisted principally of attempted impeachment of the defense witnesses to show they were Republican partisans who had themselves uttered threats against or made statements hostile to Goebel. Several witnesses contradicted the testimony of defense witnesses that Steffy, the messenger boy, was in the telegraph office at the time of the shooting.

Judge Cantrill's conduct throughout the proceeding was, if anything, more tyrannical than during the first trial. Plainly he had been so thoroughly aroused by the affidavits which had been filed in support of the motion to unseat him that he never recovered a semblance of judicial poise. At every stage of the case he argued with and scolded the defense attorneys and reprimanded them in the presence of the jury. Except for a grudging attempt to meet the technical criticisms of the court of appeals of his earlier charge, his instructions to the jury were as incomplete and one-sided as they had been on the first trial.

The arguments on both sides were bitter. The jurors openly manifested their complete approval of the prosecution's denunciation of Powers and their utter indifference to anything said in his defense. Their verdict, returned in forty-nine minutes, found him guilty of murder and fixed his punishment at life imprisonment.

On motion of Powers' counsel, judgment was suspended pending an appeal, and they were given until the next February term to prepare and file the record and their briefs in the high court of appeals.

James Howard was brought to trial for the second time on January 7, 1902. Judge Cantrill presided, and a jury of twelve Goebel Democrats was sworn to make a true deliverance

between the Commonwealth and the prisoner at the bar. Except for the addition of new evidence concerning Youtsey which had been brought out in the Youtsey trial and the second Powers trial the evidence in Howard's second trial duplicated almost exactly the record of his first trial. There was the same bickering between court and defense counsel the same unrestricted cross-examination of the defendant, the same biased charge to the jury and the same passion-rousing argument. Howard was speedily found guilty, but this time his punishment was fixed at life imprisonment. His attorneys immediately filed notice of an appeal.

Berry Howard had been named in the indictment along with James B. Howard,[17] Whittaker, Combs and Youtsey as a principal in the Goebel murder. For two years he had been a fugitive, but early in 1902 he was apprehended and brought to Frankfort. On April 15, 1902, he was placed on trial before Judge Cantrill and a solidly Democratic jury.

Berry Howard was an active Republican politician from the southeastern mountain districts. He had served a term in the state house of representatives and participated in the inner councils of the state Republican organization.

The Commonwealth, in an attempt to make a case against him, introduced much of the evidence previously offered in the Powers, James Howard and Youtsey trials. The specific evidence against Berry Howard was the testimony of five witnesses that before the shooting he had boasted that he was going down to Frankfort to "settle the contest" and to "end the Goebelism business"; that he had said that Goebel would be killed if he contested the election; and that on the Friday before the shooting, when an election contest was in progress, he was apparently in charge of a group of armed men who crowded the hall between the legislative chambers on the second floor of the capitol building.

Several witnesses testified that at various times before and

[17] The two Howards were not related.

after the shooting they saw Berry Howard with weapons—sometimes a rifle, sometimes a revolver, sometimes both. A number of witnesses claimed that immediately after the shooting they saw him on the west steps of the executive building, seemingly directing other men who were crowded around him. Others testified that on the evening of January 30 they saw Berry Howard in a Frankfort restaurant with Jim Howard. Still others swore that when Berry Howard left Frankfort the day after the shooting Hockersmith was in the same car on the same train.

Berry Howard took the stand and denied that he had made any of the threats against Goebel the Commonwealth witnesses had ascribed to him. He denied participation in or knowledge of any plot to kill Goebel or anyone else. He said that at the time of the shooting he was on the second floor of the state capitol, and in this he was corroborated by five respectable and unimpeached witnesses. A large number of witnesses, questioned as to the general reputation of the five witnesses for the Commonwealth who asserted that Berry Howard made threats against Goebel, said that it was bad and that the Commonwealth witnesses could not be believed under oath.

The prosecution argued strenuously for the conviction of Berry Howard, but the overwhelming impeachment of the Commonwealth's witnesses and the defendant's unassailable alibi had convinced the jury of his innocence, and it promptly returned a verdict of not guilty.

On December 3, 1902, the Kentucky high court of appeals published its decision on Caleb Powers' appeal from his second conviction.[18] The court (the three Democrats dissenting) reversed the judgment of the lower court, principally on the ground of Judge Cantrill's refusal to vacate the bench in the face of the showing made of manifest prejudice.

Two weeks later the court of appeals handed down its opinion on the second appeal of James Howard. It followed the

[18] *Powers* v. *Commonwealth*, 114 Ky. 237, 24 Ky. L. R. 1007, 1350, 70 S. W. 644, 1050.

pattern set by the Powers case. The court (four Republicans in the majority and three Democratic dissenters) reversed and remanded the case.[19] The principal ground of reversal was the same as in Howard's first appeal: the unnecessary and prejudicial injection into the case of the suggestion that Howard had brutally killed George and Tom Baker and Special Prosecutor Campbell's argument to the jury that "Goebel was killed as Tom Baker was killed."

James B. Howard was brought to trial for the third time on April 7, 1903. Judge Cantrill again presided. After the usual pretense of selecting an impartial jury, twelve acknowledged Goebel Democrats were sworn to try the case, and the trial proceeded.

The witnesses who had been called by the prosecution on the two previous trials repeated their testimony. Two new witnesses appeared who, if their testimony was to be believed, removed the case from the realm of circumstantial evidence and established the guilt of Howard by direct evidence of a most sensational character.

The first of these newcomers was a man named Franklin M. Cecil, who about two years after the shooting had been indicted as an accessory before the fact to Goebel's murder. He became a fugitive, but in early 1903 patched up a deal with the prosecution. For immunity expressly or impliedly promised he agreed to submit himself to the jurisdiction of the Kentucky courts and turn state's evidence.

Cecil, to put it mildly, had an unsavory record. Although Howard's attorneys were unable to get all the facts before the jury, the records showed that Cecil had previously been indicted for a variety of crimes—murder, robbery, kidnaping and rape.

Cecil testified that in a conversation on the Monday before the murder Caleb Powers said, "If Goebel isn't killed, the damned legislature is going to seat him in spite of hell." Cecil

[19] *Howard* v. *Commonwealth*, 114 Ky. 372, 24 Ky. L. R. 1125.

said he replied to that, "I guess there is nothing surer than that." Then Powers said, "There is a man from across the hall wanted to kill him from this window, but I wouldn't let him do it." Cecil said, "Why in hell didn't you let him do it?" and Powers replied, "I was afraid to trust him, but we are looking for a man in the morning and if he comes he will do it, and if he don't you will need the mountain men here, and if you will find a man who will kill Goebel I will find a man who will furnish the money." After this conversation was finished Powers charged Cecil to say nothing about it. On cross-examination Cecil testified that Powers did not name the man who was expected in the morning and he was not sufficiently interested to inquire.

The next witness to take the stand was the convict Henry Youtsey. He was a pitiful object. Never a rugged individual, he had been reduced by two years' incarceration to a veritable skeleton, and a ghastly prison pallor was spread over his face. Contemporary newspaper accounts referred to the "wild," "starey" and "furtive" look in his eyes.

Whether or not Youtsey's appearance as a Commonwealth witness had been induced by his treatment in prison (and there were repeated press stories that he had been subjected to almost unbelievable torture) or by promises of future lenience, it was apparent almost from the first question asked him that he had gone over completely to the prosecution. He was now prepared to do what no witness in any of the previous trials had done—link James Howard to Caleb Powers and ex-Governor Taylor in a conspiracy which had culminated in the assassination of Goebel.

Youtsey testified that at Governor Taylor's suggestion he wrote a letter asking James Howard to come to Frankfort on the thirtieth. Howard did come to Frankfort and to the executive building on the morning of that day. He introduced himself to Youtsey, who admitted him to Powers' private office, discussed with him the plans for the shooting and then left. A few seconds later the fatal shot was fired.

Cecil and Youtsey were subjected to long and searching

cross-examinations which, it would appear from the record, thoroughly discredited both the testimony of the witnesses and the witnesses themselves.

Howard took the stand in his own defense. He unequivocally denied Youtsey s testimony and again swore he had no part in the killing. Caleb Powers took the stand and vehemently denied that he had ever talked to Cecil or Youtsey about Howard or about schemes to kill Goebel. He insisted that he had not the slightest previous intimation of any plot or plan to kill Goebel. The deposition of ex-Governor Taylor, taken in Indiana, was read in evidence. In it Taylor stated under oath that he had never talked to Howard, never talked to Youtsey about Howard, never written or suggested the writing of a letter to Howard about coming to Frankfort or any other subject.

As on the two previous trials, Howard's defense availed him nothing. The jury after a short deliberation returned a verdict of guilty and fixed his punishment at life imprisonment. The defendant's motion for a new trial was a mere formality. Judge Cantrill permitted no argument and promptly overruled it. Howard's attorneys again sought a review of the judgment in the Kentucky court of appeals.

The Third Trial of Caleb Powers

The court of appeals in its recent opinion in the Powers case had ruled that Judge Cantrill had disqualified himself to act as trial judge in the prosecution of Powers. Powers' counsel,[20] however, wisely apprehended that the belligerent jurist would ignore the high court's decision. They therefore appeared before him at the May 1903 term of court and formally moved for an order that he disqualify himself for prej-

[20] There were changes in the legal representation on both sides. County Attorney T. S. Gaines appeared as additional counsel for the Commonwealth. Judge J. R. Morton, James B. Finnell, James C. Sims, L. F. Sinclair, Major A. T. Wood, Samuel M. Wilson and James A. Violett appeared for the defendant.

udice and certify to the governor that a vacancy existed.[21] As expected, Judge Cantrill overruled the motion. Powers' attorneys then applied for and obtained a mandate from the court of appeals ordering Cantrill to vacate the bench and make the required certification to the governor. Rather than face contempt charges, Judge Cantrill obeyed the order.

The defense derived more satisfaction than advantage from the ousting of Judge Cantrill. Governor Beckham appointed in his stead a bosom friend, Judge Joseph E. Robbins, the circuit judge of Graves County. An active Democratic politician, Robbins had held numerous public offices by Democratic appointment or election. He had been an old friend and ardent supporter of Goebel and had publicly denounced his assassination and branded the "Republican conspirators" responsible for it as "murderers" and "assassins."

Powers' third trial commenced on August 3, 1903. The court ordered the sheriff to summon a panel of 200 men from Bourbon County for jury service. The sheriff brought 176 men into court. Of them 173 were Goebel Democrats. The jury finally selected was made up of eleven Democrats and one declared Republican. The Republican, however, was shown to have been an ardent admirer of Goebel and to have spoken bitterly and vengefully of his assassins.[22]

Almost all the witnesses who had testified in the seven earlier Goebel murder trials took the stand and repeated their testimony. Noakes was again in the prosecution's camp. He repudiated his earlier retraction and repeated the story he had told on Powers' first trial. The sensations of the trial, however, were provided by three witnesses who had not previously appeared against Powers.

The first of the three was Henry Broughton, county clerk

21 A Kentucky statute provided that, where for any reason a regularly elected judge was disqualified to sit in a particular case, the governor, on proper application, should appoint a special judge to hear it.

22 Out of over 1,700 men summoned up to this time for jury service in the Goebel murder trials, this was the only Republican permitted by the prosecution to sit on any of the juries.

of Bell County. Broughton swore that in a conversation on January 25 Caleb Powers asked him to recommend a couple of men "who could do the work"—meaning the killing. The names Broughton gave him were Jake Vandever, Zach Steele and Franklin M. Cecil. Broughton was discredited even before he was put on the stand. It appears to have been well known that three days before the trial Broughton had become so saturated with Kentucky whisky that he had reached the stage of delirium tremens and was incoherent. To establish Broughton's restored competency a Commonwealth-sponsored doctor preceded him on the stand and testified he was now sufficiently recovered to testify. Defense Counsel Violett's cross-examination of Broughton disclosed a rather heavy criminal record and further discredited him.

The testimony of Cecil and Youtsey went far beyond their earlier recitals in the third trial of Howard. Cecil swore he had a conversation with Powers in his office the night before Goebel was shot. A man named Paynter was there and said, "Somebody ought to kill the son-of-a-bitch." Paynter left soon after, and Powers said to Cecil, "If Goebel isn't killed, this damned legislature is going to seat him in spite of hell." The balance of the conversation was as Cecil had given it on the third Howard trial.

Cecil testified further that later the same evening he saw Powers come out of the governor's office. Powers motioned him to come to the door, and they both went into Taylor's office. When they were seated Taylor said, "If Goebel isn't killed, they are going to rob me of my office," and added, "I have $2,500 of campaign funds left, and I will give that and a free pardon to any man that will kill Goebel." Cecil took that as a suggestion that he should kill Goebel and replied, "Do you think I'm crazy or just a damned fool?" Taylor told him to forget it and say nothing about it.

On cross-examination Cecil could offer no explanation of why, if arrangements had already been made with a man to kill Goebel, Taylor should have offered him $2,500 to do the

job. Cecil admitted having made both oral and written statements out of court which were completely at variance with his sworn testimony.

Youtsey, apparently in much better health and vigor than at the Howard trial, told an elaborate story of a succession of plots and plans to kill Goebel. First he related an indefinite conversation with an unnamed man who said he was the Republican chairman of Trimble County. The gist of this seems to have been that Goebel wore a coat of some kind of armor which would make assassination difficult.

Youtsey's next contact was with "Doc" Johnson of Jackson County, about January 15 or 16. Youtsey said that Johnson already had three murders to his credit and had just received a pardon from Taylor for one of them. Johnson told Youtsey he would be delighted to kill Goebel. Johnson's first idea was that he might kill Goebel by secreting a nitroglycerine bomb in his hotel room. This plan was discarded "because it might injure some innocent people." Johnson next suggested introducing poison into Goebel's whisky, which might be temporarily removed from his room. This plan was likewise rejected for the same reason.

After their rejection of the explosion and poisoning ideas, Youtsey went to W. J. Davidson, one of Powers' office assistants, and asked if it would be all right to use the secretary of state's private office as an ambush from which a man might shoot Goebel. Davidson said, "The God damned son-of-a-bitch ought to be killed," and told Youtsey he could have the use of the office for that purpose any time he wanted it. Youtsey took Johnson into the office and showed him all the exits from the office and the building.

There were a number of guns in the secretary's office, including a 38-55 Marlin Youtsey had sold to Grant Roberts, a state employee in the executive building,[23] and a 38-56 Winchester. Youtsey sent to Cincinnati for the cartridges to fit the Marlin—smokeless cartridges which shot steel bullets. It

[23] Youtsey expressly exculpated Roberts from any knowledge of or participation in any of the plans to kill Goebel.

was thought cartridges of this sort would penetrate a coat of mail if Goebel actually wore one. Johnson approved of the cartridges and said he was all set to do the job. Youtsey then told Culton about the plan.

Later, on January 25, Youtsey saw Culton sitting close to the door which led from the reception room into Powers' private office. Johnson opened the private-office door, and Youtsey and Culton went in. The corner window was raised, and a rifle lay across the backs of chairs placed so that "the shooter" would have a "rest" for his gun. The gun was the 38-55 Marlin. Culton told Youtsey to go to the senate chamber and see if Goebel was there. Goebel *was* there, and Youtsey so reported to Culton. Culton and Youtsey departed, leaving Johnson in the secretary of state's private office. Nothing happened. Later Johnson reported that Goebel came out of the statehouse surrounded by a crowd of men and Johnson "couldn't get a bead on him."

In a subsequent conversation Johnson demanded to see Taylor. Youtsey and Johnson went to Taylor's office and told him Johnson's plan to kill Goebel. Taylor made no objection, but cautioned them to tell no one of the interview. Johnson then left the building, and Youtsey never saw him again.

The next episode in Youtsey's narrative concerned Hockersmith, who had been introduced to him by a Captain Bullock as "Tallow Dick" Combs. Thereafter, Youtsey said, he had continued under the impression that Hockersmith was Combs. On the twenty-ninth, the day before the shooting, Youtsey took Hockersmith into Caleb Powers' private office, showed him the Marlin rifle and explained how the shooting could be done and how afterward he could leave by the hall door, run down the basement stairs and mingle with the crowd of men that would be there. Youtsey said the Negro agreed to kill Goebel that day. Later Youtsey met John Powers and told him a Negro who had been hired to kill Goebel wanted to get into the secretary of state's private office in order to shoot Goebel from there. John Powers pulled a bunch of keys out of his pocket, took one off and gave it to

him. Youtsey hunted up Hockersmith and gave him the key, then went into the auditor's office to wait. He heard no shots, so he went outside the building and looked up toward the secretary's office. The windows were down and the shades up. He knew then that something had gone wrong. In a small building on the west side of the statehouse he found Hockersmith, who said Youtsey had given him the wrong key.

Youtsey went next to Caleb Powers and told him what had happened. Powers said, "I can't give you a key, but come into the office and I will show you how it can be worked." They went into the private office together, and Powers "gave the bolt [on the outside hall door] a twist" and said, "There, all you have to do is to push against the door and walk in." Youtsey told Powers at this time, "If you are not in favor of this, all you have to do is to say so." Powers replied that he would have to "clear the matter with Taylor." So Youtsey went to Taylor's office and told him of the plan. Taylor said he was afraid to trust a Negro, and the idea of having Hockersmith kill Goebel was abandoned.

Youtsey's chronology of events was confusing. He assigned the conversations with Hockersmith and with Taylor about Hockersmith to January 29, but he also testified that on the twenty-fifth, after Johnson had run out on the job, Taylor called him into his office and dictated a letter to "James B. Howard, Manchester, Kentucky." The letter directed Howard to come to Frankfort at once and report to Youtsey. Youtsey saw the same letter again on the morning of the thirtieth when James Howard presented it to him. Youtsey "sneaked" Howard first into Taylor's private office and then into Powers' private office; in the latter he raised the "corner window," pulled down the blind and handed Howard the Marlin rifle. Two loaded revolvers lay on a table near the window. Howard said that after he shot the rifle he would fire the revolvers so that it would sound as though a half-dozen men were in the room. Youtsey explained his plan for Howard, after he shot, to leave by the hall door and run downstairs and through the base-

ment to the outside of the building. Howard then picked up the Marlin rifle, sighted it and "got his bearings."

In a few minutes Goebel appeared on the walk leading to the capitol. "There he is now," said Youtsey, and he hurried out of the room by the hall door. As he ran down the steps to the basement he heard a rifle shot. When he had taken eight or ten steps more he heard three or four revolver shots. He ran through the barbershop, hollering about the shooting, and as he did so his own revolver in some way slipped from his belt. He caught it as it was falling through one of his trouser legs, grabbed it and continued running in the stooping posture that had been described by other witnesses.

He circled around and came back into the first-floor reception room. Some men were trying to get into Powers' private office, and Youtsey got a hatchet and tried to break open the door. When they succeeded in opening the door Youtsey, Taylor and some others went in and found the Marlin rifle on a table in the middle of the room. One of the men picked it up and "broke" it, and a shell fell out which Youtsey picked up and put into his pocket. This was the last Youtsey saw of the Marlin. The shell he threw into "a very hot fire in the governor's office."

Youtsey testified that later in the Georgetown jail he had a conversation with Powers, who wanted to get an affidavit from him. Reluctantly Youtsey gave him a signed paper with the understanding that Powers "was never to use it openly." The paper, dated January 28, 1901, was offered in evidence. It was a strange document. It recited that "for the purpose only of enabling Caleb Powers to clear himself of all connection with the murder the said Youtsey agrees to and does sign and swear to the following affidavit, *waiving its truth or falsity.*" It then went on to say that Powers was innocent and knew nothing of and had had no part in any plan to kill Goebel.

Cross-examination of Youtsey did not accomplish much. He was made to repeat his testimony and questioned on de-

tails. There was little or no variation from his direct testimony. Confronted with the inconsistent statements he had previously made, Youtsey glibly and smilingly asserted that they were lies.

Only on the developed facts of his treatment in the penitentiary, which was urged by the defense as the reason for his present testimony, did the cross-examiner score. It clearly appeared that Youtsey, physically a weakling, had been assigned work designed to "break him." His first job was on a power machine, where he sustained a severe injury to one of his hands. He was next put to work with Negroes stoking boilers in 110-degree temperatures. For minor infractions of discipline he had been put in solitary with a ball and chain on his ankles and given only bread and water. The defense was not allowed to show that he had been repeatedly threatened with beatings. It was, however, shown that when he complained of his treatment to the warden—Eph Lillard, formerly Goebel's bodyguard—he was told there was a way he could get better treatment if he was smart enough to take it. Since he had gone over to the state his burden had been lightened. He spent most of his time idling in the prison hospital and was not made to wear convict stripes.

The defense called a larger number of witnesses than it had produced on either of the two previous trials. Four men who had been present at the much-discussed agricultural-building meeting—George S. Page, H. H. Howard, H. S. Van Zandt and T. C. Davidson—denied that Powers had said that what they were doing was dangerous or that if anything happened they might all be indicted for conspiracy.

Another witness swore that Youtsey told him after he had first gone to prison that he had no idea of testifying in Powers' case, but, if he did testify, he would swear to the truth and the truth was he knew nothing that would in any way hurt Powers.

Several witnesses who were in the reception room between the secretary of state's and governor's offices on the morning of the thirtieth testified that immediately after the shooting

they tried the doors of Powers' private office and found them locked.

W. J. Davidson, replying to Youtsey's testimony, said that Youtsey had never talked to him about using Powers' private office for the purpose of hiding a man there who would kill Goebel, or about any plan to kill Goebel. He swore he never saw James Howard at any time in his life until long after the shooting when he saw him on trial in court.

James Howard took the stand, repeated his former testimony and specifically denied receiving a letter from Taylor on any subject. He insisted he had never seen Youtsey before the murder.

A large number of witnesses, some of whom had testified in the former trials, testified they were in or near the statehouse grounds when and after the shots were fired and they did not see James Howard at any time during the morning of January 30.

The depositions of ex-Governor Taylor and Charles Finley, which had been taken in Indiana, were admitted in evidence. Taylor's deposition offered a complete and unqualified denial that he had ever talked to Caleb Powers, John Powers, Finley, Youtsey, Cecil, Culton, Noakes, Wharton Golden, "Doc" Johnson, James Howard, Berry Howard, Combs, Hockersmith, Whittaker or anyone else about killing Goebel. He had no knowledge of any conspiracy or plan to kill Goebel or to attempt through any other act of violence to affect the result of the contests pending before the legislature. He knew that Youtsey was a stenographer in the state auditor's office, but emphatically denied all of the conversations Youtsey claimed to have had with him. Never had he dictated to Youtsey or written or sent any letter of any kind to James Howard.

There was no sinister purpose in having companies of militia at Frankfort before the shooting, Taylor insisted. The situation was extremely tense, and he had them there to keep order. They were reinforced after the shooting because the situation had worsened; his own life and the lives of others

were threatened, and he feared outbreaks of violence at any moment.

Finley's deposition corroborated Powers as to the purpose of bringing the mountain men to Frankfort and of the protest meeting that was held after they got there. They were peaceful, decent, representative citizens of the mountain sections, exercising their right of remonstrance to a threatened wrong, and most of them left quietly after their petition had been presented and ignored. He said neither he nor Powers had anything to do with the selection of the few who remained; he and Powers had no contacts with them and gave them no orders after the twenty-fifth. He was as emphatic as Taylor in denying that he had participated in or had knowledge of any plot to kill Goebel.

The Commonwealth closed the thirty-eight days of evidence with a brief rebuttal directed to the impeachment of some of the defense witnesses. Judge Robbins, in his instructions, corrected the errors which had been criticized on the two previous appeals, but the charge as a whole remained definitely pro-Commonwealth.

There was a dramatic innovation in the summations. Powers' counsel—Judge Morton, Samuel Wilson and Major Wood—argued vigorously for the defense, but the principal argument was made by Powers himself.

Powers spoke for seven hours. His argument was a splendid résumé and analysis of the evidence—so completely objective that at times it was difficult to realize he was talking of and for himself and not for someone else. He revealed and highlighted the flaws and inconsistencies in the Commonwealth's evidence. He emphasized the irreconcilable divergencies between the cases the Commonwealth had made against Youtsey and Howard and the case it was attempting to make against him. He faced squarely the testimony of the "star perjurers"—Youtsey, Cecil, Golden, Culton, Noakes and Broughton—who, either "to save their own worthless hides" or for "blood money," had told their "Campbell-concocted stories." To their testimony he opposed the "unquestioned

facts" and "its inconsistency with every reasonable probability." He argued the "unimpeached and unimpeachable evidence" he had offered in his own defense. That, said he, together with the weaknesses, uncertainties, contradictions and repudiations in the Commonwealth's case, established his innocence or at least created an insurmountable doubt of his guilt. He pleaded eloquently for fair consideration and for simple justice as a human being fighting for his life and his honor.

Campbell's argument—the principal one for the Commonwealth—while it lacked the physical vigor which had accompanied his earlier efforts, was not wanting in viciousness. His most venomous strike was his declaration, wholly without support in the evidence, that "Howard was not hung, but eleven of the twelve jurors who tried him were in favor of hanging him." This argument, which the Court refused to exclude from the jury, probably determined the verdict. Powers was found guilty, and death was decreed as his punishment.

The defense attorneys asked for time in which to prepare a motion for a new trial. Their request was denied. Their written motion, hastily prepared, was immediately overruled.

Powers' appeal from his third conviction did not come on for decision by the court of appeals until December 6, 1904. Then the court, again by a four-to-three opinion,[24] reversed the judgment of the lower court.[25] The majority, citing many precedents in support of its finding, held that the argument of Special Prosecutor Campbell necessitated a reversal. The statement respecting the Howard jury, said the court, was wholly without justification and had been made solely for the purpose of arousing the passions of the jury to the point where it would return a verdict of the death-penalty against

[24] Since the decision of the court in Powers' second appeal there had been another change in the personnel of the court. It was now made up of five Democrats and two Republicans. Two of the newly elected Democrats joined with the two Republicans to form the majority which reversed Powers' third conviction.

[25] *Powers* v. *Commonwealth*, 26 Ky. L. R. 1111, 83 S. W. 146.

Powers. Three of the five Democrats on the court dissented.

The result of Howard's appeal from his third conviction was not so fortunate. On April 22, 1904, the court of appeals, by a vote of five to two (the two Republicans dissenting), affirmed the judgment of conviction.[26]

Howard's attorneys played their final card—a petition to the Supreme Court of the United States for a writ of error on the ground that the procedures in the trial court with respect to the summoning and examination of jurors had deprived Howard of his liberty without "due process of law" in violation of the Fourteenth Amendment. It was more than a year and a half before the high court handed down its decision. It was the unanimous opinion of the court that it was without jurisdiction to review the final judgment of the state's highest court.[27]

On January 3, 1906, Howard was transferred from his cell in the Franklin County jail to the state penitentiary.

In the three successive trials of Powers and the appeals from three judgments of conviction Powers' attorneys had endeavored through every known legal maneuver to obtain some kind of a lower-court order or appellate-court pronouncement which would compel the summoning of a nonpartisan jury. Their efforts, although intelligent and determined, had come to naught.

Faced with the hopelessness of obtaining relief in the state courts, they determined to seek redress in the Federal courts. Accordingly, shortly after the third-trial reversal by the Kentucky court of appeals they filed in the Federal Court for the Eastern District of Kentucky a sworn petition which recited their unsuccessful efforts through three trials to obtain a nonpartisan jury and the uniform decisions of the state courts denying effect to the pardon issued to Powers by Governor Taylor. The petition charged that the effect of these pro-

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[26] *Howard* v. *Commonwealth*, 118 Ky. 1, 25 Ky. L. R. 2213, 26 Ky. L. R. 363, 80 S. W. 211.

[27] 200 U. S. 164.

cedures denied to Powers the civil rights and equal protection of the laws guaranteed to every citizen by the Fourteenth Amendment to the Constitution of the United States. The petition asked for an order directing that Powers' case be removed from the state to the Federal court and be heard and determined there.

The United States Circuit Court, after a consideration of the petition (the alleged facts in which were not contested by the attorneys for the Commonwealth), entered the requested order.[28] Powers was forthwith delivered into the custody of the United States marshal and lodged in the Campbell County, Kentucky, jail as a Federal prisoner.

The Commonwealth immediately prosecuted its appeal to the Supreme Court of the United States. On March 12, 1906, that court handed down an opinion[29] in which it unanimously held that Powers had not been denied the equal civil rights and equal protection of the laws secured to him by the Constitution and laws of the United States and that no case had been made out which justified the order of removal which had been made by the United States Circuit Court. It was ordered that the case should be remanded to the state court and the custody of the prisoner surrendered to the state authorities. Within a few days after the entry of the order Powers found himself back in the county jail at Frankfort.

Despite the hardships which Powers had undergone and the fact that the reversal of his third conviction left him just where he had been when arrested nearly five years before, he might well have congratulated himself on the turns of fortune by which he had escaped the hangman. Certain it is that neither of his first two convictions would have been reversed but for the fortuitous circumstance that an election following Goebel's murder had put four Republicans onto the court of appeals.

Of the many errors which had intervened in all his trials, by far the most substantial one—Campbell's wholly unjustified

[28] 139 Fed. Rep. 452.
[29] 201 U. S. 1, 26 S. Ct. 387, 50 U. S. (L. Ed.) 633.

reference to the deliberations of the Howard jury—had occurred in the last trial, in which the jury had sentenced him to death. There were then, as has been stated, five Democrats on the appeals bench. It is extremely doubtful in view of the prevailing political prejudice that any error less glaring could have evoked the disapproval of the Democratic judges.

Powers' third appeal was decided December 6, 1904. On January 1, 1905, there was another change in the membership of the court of appeals—one which, had the hearing of his appeal been delayed, would have boded Powers no good. Judge Cantrill, one of his most bitter enemies, had been elevated to the high court! That Cantrill would have exerted every effort within his power to sustain Powers' conviction is certain. Would he have succeeded in bringing a majority of the court to that view? Fortunately for Powers, the question was academic.

Powers was benefited by another fortunate "break" as he faced his fourth trial. In the fall of 1904, and just before the reversal of his conviction in his third trial, Special Prosecutor Campbell, physically and mentally exhausted by his unceasing efforts to convict the supposed murderers of Goebel, sickened and died. He had been Powers' most vindictive and effective adversary.

Campbell's death was a serious blow to the prosecution. The entire burden of prosecuting the case was thrown onto Commonwealth Attorney Franklin, and it was the late fall of 1907 before he announced he was ready to try Powers for the fourth time.

Fortune continued to favor Powers. The November 1907 election for state officers was approaching. Whatever the result, Powers stood to profit from it. Under Kentucky law Governor Beckham was ineligible to succeed himself. The current of national politics was running strongly Republican. If a Republican was elected governor, Powers had nothing to fear. If a Democrat succeeded to the office, he certainly could be no more vindictive toward Powers than Beckham had been.

Following the pattern set in his earlier trials, the first move

of Powers' attorneys as they approached a fourth trial was directed toward securing an impartial presiding judge. In July a petition and supporting affidavit were filed with Judge Robbins, demanding that he disqualify himself because of alleged prejudice against the defendant. Judge Robbins heard the opposing counsel at length, and on July 31, to the surprise of the defense and the confusion of the prosecution, ruled that, while all the charges made against him were unfounded or false, he would not at this late date mar his record as a judge by sitting in any case where he was accused of unfairness. The clerk was directed to inform the governor of Judge Robbins' decision.

The opposing attorneys were unable to agree on a special judge, and the matter went to the governor. Governor Beckham named his personal friend and long-time political associate, Judge J. S. Morris of LaGrange County.

The Fourth Trial of Caleb Powers

Powers' fourth ordeal commenced on December 27, 1907. His leading counsel were Judge Sims, Owens, Wilson and Sinclair. Commonwealth Attorney Franklin and Colonel Hendrick led for the prosecution.

Whether it was because a Republican governor, Augustus E. Willson, had been elected and would take his seat on January 1 or because the general community had become imbued with a "keener sense or consciousness of justice," as one historian has remarked,[30] the undoubted fact is that the atmosphere of the courtroom in the Georgetown courthouse had changed. The jurors' names were taken from the jury wheel. The wheel had not been packed. Questioning of the veniremen revealed their divergent political views. Some were Democrats, some were Republicans, some were Independents. Some had favored Goebel, some had opposed him, and some of the younger men—eight years removed from the date of the

[30] Samuel M. Wilson, *History of Kentucky*, II, Ch. XIX. Chicago and Louisville: S. J. Clarke Publishing Co., 1928.

tragedy—had no views on the subject. The result was a "mixed jury" of eight Republicans and four Democrats, all of whom swore they had no fixed ideas as to the guilt or innocence of the defendant and would give him a fair and impartial trial.

Except that Cecil had fled to parts unknown and was not procurable as a witness, the Commonwealth's case against Powers was substantially the same as it had been on the third trial.

The main effort of the defense was directed to discrediting Youtsey. Thirteen witnesses—office associates, former friends and acquaintances, codefendants, jailers, fellow prisoners and others—took the stand and testified to conversations they had had with Youtsey or overheard between Youtsey and others which were completely at variance with the sworn testimony Youtsey had given as a Commonwealth witness.

A bank clerk in Frankfort, who had business with the state auditor, swore he was in the auditor's office not more than twenty minutes before the shooting and saw neither Youtsey nor James Howard there.

One of Youtsey's fellow prisoners testified that, after the third trial of Powers, Youtsey told him he had been forced to testify against Powers because he could not stand what they were doing to him in prison and he expected to be pardoned for what he had done.

A Frankfort jailer swore that shortly after Youtsey's arrest in 1900 he overheard a conversation between Youtsey and Dick Combs. Combs, according to the witness, said to Youtsey, "You didn't aim high enough to kill him," and Youtsey replied, "It seems to me he is pretty dead. I had him in line to make a dead shot." The same witness told of overhearing another conversation about the same time between Youtsey and another fellow prisoner. In answer to the statement, "Captain Davis and Powers both think you are going to swear yourself out by swearing everybody else in," Youtsey replied, "Captain Davis and Powers are both God-damned fools. Neither of them had anything to do with killing Goebel, but

everybody thinks they did because of the pardons they tried to get. The shots were fired from Powers' office, but he didn't know it was going to be done." Then, said the witness, the prisoner asked Youtsey how it could have been done from Powers' office without Powers knowing about it, and Youtsey answered, "Me, Culton and Hockersmith found a key which we filed a little and it would unlock Powers' office as slick as you please."

Two witnesses described conversations with Youtsey shortly after the shooting in which he said, "If I hadn't been afraid of giving myself away, I had a key that would have unlocked the door to Powers' office."

R. C. Kinkead, one of Powers' attorneys in his earlier trials, testified that right after Youtsey's conviction he interviewed him in the Georgetown jail. Youtsey told him that Powers and Howard were innocent and he had never heard any talk from anybody about assassinating Goebel.

The final witness called to impeach Youtsey was his wife, Sarah Youtsey. Shortly after the murder, she said, she was present at a conversation between her husband and Caleb Powers in the Georgetown jail. Powers told Youtsey that he (Youtsey) could not swear to anything against him (Powers) without perjuring himself, and Youtsey answered that he had never intended to intimate that he knew anything against Powers. Mrs. Youtsey also testified to Youtsey's many bitter complaints to her of the inhuman treatment he had been subjected to in prison. At times when she saw him "he was so weak he could hardly stand." She testified she repeated Youtsey's complaints to Warden Lillard, and Lillard said, "You can get Henry out of here if you want to. Just tell him to tell all he knows."

James Howard, summoned from the penitentiary, repeated the statements he had made in his own and on Powers' previous trials. Several new witnesses were called to corroborate him--witnesses who were in the statehouse grounds immediately after the shooting and did not see Howard there, and

one witness, in addition to the two called in the earlier trials, who swore that Howard was in the lobby of the Board of Trade Hotel at the time of the shooting.

Albert Helton, one of the men who had come up to Frankfort from Harlan County, testified that shortly after the shooting he came into the reception room outside Powers' private office and saw a man, whom he did not identify, trying to force the door into Powers' office. After the door was opened (he did not say how) Helton went in with a number of other men. There was a 38-55 Marlin rifle on the table, which he picked up and took away with him. That night he and a number of other mountain men left for home. He showed the Marlin to them and told them where he got it. Neither he nor any of the men knew whom it belonged to, so he kept it—kept it until last January (1907) when Grant Roberts came to see him. Roberts identified the gun as his own, and Helton gave it to him after making a note of the number of the rifle—97278. A Marlin rifle was produced and shown to the witness. He examined it, read the number on it and said it was the same gun he had picked up in the secretary of state's office on January 30, 1900, and later given to Roberts.

Roberts testified he had bought the Marlin from Youtsey for $12.00 some time before the Goebel murder. He had kept it in a vault in the auditor's office from which it had disappeared shortly before January 30, 1900. In January 1907 he learned that Helton had picked up a Marlin rifle in Powers' office the day of the shooting and went to see Helton about it. He identified the Marlin rifle Helton had as his own gun, and Helton gave it to him. The witness identified the Marlin in court as the weapon he had bought from Youtsey.

The depositions of ex-Governor Taylor and Charles Finley were again offered and read to the jury.

There was no new or important rebuttal and on January 2, 1908, both sides rested. The arguments of counsel, while not lacking in vigor on either side, were largely free from the vicious and extravagant exaggerations and distortions which

had disgraced the former trials. Judge Morris' charge was more nearly in balance than that of either of his predecessors.

At nine o'clock on the morning of January 4, 1908, the case was given to the jury. After a twenty-four-hour absence the jurors reported they were hopelessly deadlocked and that there was no prospect of a unanimous agreement. The Court directed them to continue their deliberations. Another twenty-four hours went by without an agreement, and the Court, with the consent of both sides, discharged the jury.

While the result was indecisive, Powers at long last had cause for rejoicing. It was no secret that throughout the long deliberations ten jurors had steadily voted for his acquittal and that one of the two Democratic holdouts had offered to make the verdict unanimous if the other would join him.

Powers had repeatedly declared he would not seek a pardon from the newly elected Republican governor and would be satisfied with nothing less than the vindication of an acquittal at the hands of a jury. Now, however, on the advice of the many friends who had stood loyally by him throughout his long ordeal he petitioned Governor Willson for a pardon. It was accompanied by a supporting petition which contained nearly 500,000 signatures. About half of the signers were Kentuckians, most of them Democrats. Thousands of individual letters poured into the chief executive's office. Many protested vigorously against any extension of clemency, but many more supported the petition. Friends of James B. Howard filed a similar petition in his behalf.

The governor announced he would hold open public hearings on both petitions and that anyone who cared to appear would be heard. More than a hundred persons availed themselves of the invitation. On the morning of June 13, 1908, the governor announced his decision. He declared that a reading of the trial records had convinced him beyond every reasonable doubt that Powers had not been an accessory to the murder, and that Youtsey and not Howard had fired the shot which killed Goebel. He added that his examination of the evidence had satisfied him there had been no conspiracy to

kill Goebel; that Youtsey, and Youtsey alone, had planned and executed the crime. His plain duty, he concluded, demanded that he grant both Caleb Powers and James Howard full and unconditional pardons.

Within the hour Powers received the news. At eleven o'clock he walked out of the Franklin County jail a free man. For eight years, three months and two days he had been a prisoner without legal conviction.

Aftermath

On April 23, 1909, Governor Willson issued pardons to former Governor William S. Taylor, Charles Finley, John L. Powers, John W. Davis, Zach Steele and Holland Whittaker. Taylor, Finley and John Powers were still fugitives. Davis, Steele and Whittaker had long since been released from custody, and the Commonwealth showed no disposition to bring them to trial.

Caleb Powers declared after his release that he was "disgusted with politics" and would retire to his home in Barbourville and resume the practice of law. His disgust was short-lived. His mountain neighbors welcomed his return and made a hero of him. From all parts of the country came demands for the appearance and personal story of "the American Dreyfus." A lyceum association offered an attractive contract, and soon Powers was traveling across the land and thrilling audiences with a sensationally worded and dramatically recited account of his long imprisonment and his struggles for justice.

By the spring of 1910 the "Powers story" was stale news. The lyceum possibilities had been exhausted. The restless Powers sought and found new expression in a candidacy for the Republican nomination as the representative of Kentucky's eleventh district in the Congress of the United States. The district was overwhelmingly Republican, and nomination on the Republican ticket was equivalent to election. Powers' task was to defeat the Republican incumbent, Calvin

Edwards, for renomination. Edwards had served several consecutive terms; he had made a good record, was popular and enjoyed the support of the regular Republican organization.

Powers made a remarkable campaign. For seven months, night and day, he covered the mountain roads and village streets on horseback—shaking hands, speaking at crossroads, village halls, in stores and on street corners. His campaign appeal was brief and uncomplicated: "I am seeking vindication for a great wrong inflicted upon me by vicious, self-seeking Democratic politicians. You have declared all along you believed in my innocence. Now prove it by voting for me."

Feeling mounted as election day drew near. The press, inside and outside the state, predicted widespread violence. When the polls opened on September 15 armed men from both camps escorted their partisans to the voting booths. Watchers stood by, their guns in readiness, as the votes were counted. Apparently a balancing of forces averted disorder. An Associated Press dispatch, summarizing the events of the day, declared: "Contrary to expectation, there was no trouble, save for a lone fatality which occurred at Grapevine, near Hazard, in Perry County, a wild mountain region. Squire Colwell shot and killed John Holmes in an argument over the casting of ballots."

Powers won the nomination by a 7,000-vote majority. The New York *Times* commented editorially:

> The curse of William Goebel's murder, himself a man who had taken human life, has lain heavily on Kentucky. . . . It had divided families and engendered feuds which may endure for generations. It will be the means of electing Caleb Powers, the persecuted defendant, to the Congress of the United States, and thereby fresh and vivid life will be given to the bitter controversy. The crime was political, the prosecution was political, and the sinister legacy of it all will be political.

The election of Powers in the following November was a mere formality. There was a brief flurry in the new Congress

as to whether Powers should be permitted to take his seat. Many Democrats were prepared to oppose him. Fortunately for Powers, one James M. Curley of Massachusetts had been elected to the same Congress. Curley was a Democrat who had previously been convicted and had served a term of imprisonment for a violation of the criminal provisions of the state civil-service laws. The Republicans were prepared to vote against the seating of Curley. There is no evidence by which to prove that a trade settled both objections. There is the fact that both Powers and Curley took their seats in the councils of the nation.

Powers was re-elected in 1912, 1914 and 1916. His record was colorless.

While maintaining a nominal residence in Barbourville, he continued to live in Washington until his death in 1932 at the age of sixty-four.

In 1911 the Kentucky political pendulum swung back again, and the Democrats were returned to power. Repeated applications were made for the pardon or parole of Youtsey, but it was not until 1916 that he was released on parole. In 1919 the Democratic governor, James D. Black, granted him a full pardon.

Nearly a score of years had elapsed since William Goebel had been shot down in the capitol square. An even score of men had been charged as principals in or accessories to his assassination. There had been trials, acquittals, convictions, reversals, retrials, more reversals, paroles and pardons. Today there is little to remind even Kentuckians of the "near civil war" which immediately preceded and followed Goebel's assassination. The Goebel Election Law, which started all the trouble, has been forgotten. It was amended and virtually repealed within a year following its sponsor's death.

The judges and lawyers who wrought and wrangled in the trials of Powers and his alleged coconspirators have all passed

from the earthly scene. One of the principals, James B. Howard, alone survives. Newspaper reporters and feature writers, bent on a revival of the tragic story through a natural interest in the sole survivor, occasionally journey to Howard's remote cabin in the Clay County hills and attempt to interview him. Their efforts have proved fruitless. Nothing will induce Howard to talk of the crime, his trials or his imprisonment. On one subject alone is he vocal. He is readily provoked into damning—with native emphasis and a vigor which have lost nothing with the passage of time—everything and everybody bearing the label "Democrat."

At the capital city of Frankfort a valiant effort has been made to perpetuate the memory of William Goebel. After his funeral cortege had traversed the entire state (carefully avoiding the use of the facilities of the Louisville & Nashville Railroad) his body was interred with all pomp and ceremony in the state cemetery "on top of the great high hill overlooking the long sweep of the beautiful Kentucky River."[31] The old statehouse, the scene of Goebel's last but hollow triumph, now houses the State Historical Society and Museum—rich with relics and records of the Goebel tragedy. The executive building and the surrounding grounds are as they were a half century ago. In the cement approach to the old capitol a bronze circle enclosing a cross reminds a visitor that "Here Fell William Goebel, January 30, 1900." Another marker in the hackberry tree, still standing, points to the spot where the steel bullet lodged after it had passed through the body of its victim.

In 1911 a bronze statue of heroic proportions was mounted on a huge granite base above the murdered governor's grave, where it dominates the surrounding high ground and looks down on the little city in the valley below. From one of the inscriptions on the gigantic tomb the interested visitor learns that the monument was erected by the people of Kentucky and other states:

[31] Samuel M. Wilson, *op. cit.*

In Memoriam of
Kentucky's Martyr Governor
William Goebel
Who Devoted and Gave
His Life
In Defense of
The Rights of the Common People

To which the detached and possibly skeptical reader of this long record of a wholly selfish political strife culminating in murder—and of the prosecutions and persecutions which followed—is perhaps prompted to append:

DE MORTIUS NIL NISI BONUM
(Of the Dead Be Nothing Said But What Is Good)

II

The Trial of

ALBERT T. PATRICK

for the Murder of

WILLIAM MARSH RICE

(1902)

2

The Rice-Patrick Case

ANY COLLECTION *of notable American trials which has as its aim a comprehensive panorama of the courts of the United States must include an account of the prosecution of Attorney Albert T. Patrick for the murder of William Marsh Rice. The prominence of the accused murderer and his millionaire victim and the extraordinary but unsuccessful devices employed to gain possession of the Rice millions—in which the alleged murder was but an incident—make the case one of absorbing interest. That interest is heightened by two facts: (1) Patrick's plot, had it succeeded, would have robbed the now famous Rice Institute of Texas of its chance for existence; and (2) Patrick, generally considered to have been as cold-blooded and calculating a killer as was ever brought to the bar of justice, managed, by means varied and persistent but seriously questioned, to escape the hangman.*

To the trial lawyer the case has a professional interest because of the importance attributed by both prosecution and defense to the testimony of expert medical witnesses—fifteen in all—as to the cause of death. These witnesses were of the highest rank in their respective fields, and the direct examinations and cross-examinations on both sides were carefully prepared and conducted with extraordinary skill. (In the following account these examinations are necessarily summarized. The practitioner interested in a more detailed study is referred to the printed record available in the files of the clerk of the New York court of appeals and the New York Law Institute.)

THOMAS CARLYLE in his memorable satire *Sartor Resartus* pictures his fantastic German philosopher as sitting at ease in his attic pinnacle far above the imaginary city of Weissnichtwo and soliloquizing on "the whole life circulation" of that mythical metropolis. Says Teufelsdröckh:

I look down into all that wasp-nest or beehive, and witness their wax-laying and honey-making, and poison-brewing. . . . These fringes of lamplight, struggling up through smoke and thousand-fold exhalation. . . . Oh, under that hideous coverlet of vapours, and putrefactions, and unimaginable gases, what a Fermenting-vat lies simmering and hid! The joyful and the sorrowful are there; men are dying there, men are being born; men are praying,—on the other side of a brick partition, men are cursing; and around them all is the vast, void night. . . . All these heaped and huddled together, with nothing but a little carpentry and masonry between them;—crammed in, like salted fish in their barrel;—or weltering . . . like an Egyptian pitcher of tamed vipers, each struggling to get its *head above* the others: *such* work goes on under that smoke-counterpane!

The real city in Carlyle's vision was London. It could equally as well have been Paris or Berlin or New York. Indeed, could a Teufelsdröckh have looked down from some lofty eminence above the city of New York in the later days of September 1900, and through the murky, overhanging haze have made out the Berkshire Apartments at 500 Madison Avenue and penetrated the masonry and partitions which hid from view the fifth-floor apartment in that building, he might actually have seen "poison-brewing" and an old man dying under the hands of a pair of "tamed vipers" who were struggling to get their heads above others.

But no one other than the vipers themselves knew the truth concerning the death of eighty-four-year-old William Marsh Rice in the Madison Avenue apartment on that September Sunday. The fact that he was murdered was revealed only after the errors and miscalculations of the perpetrators of the supposedly "perfect crime" brought down on themselves the

sequence of ills which usually overtakes overconfident criminals—suspicion, investigation, accusation, prosecution, recrimination and disaster.

William Marsh Rice was born in Springfield, Massachusetts, in 1816. In the early 1830s he left New England to seek his fortune in the then remote frontier state of Texas and settled in Houston. Rice had the Midas touch. Everything he put his hand to—retail merchandising, exporting, importing, land speculation, oil speculation, hotel operation—turned to gold. In 1900 he was accounted a multimillionaire

While he claimed that New York had been his domicile since 1865, it is quite certain that until 1893 Rice's business interests in Texas necessitated his presence in that state the greater part of his time.

Rice married twice but had no children. For a number of years he lived with his second wife in a rather pretentious and well-serviced residence in Dunellen, New Jersey. After her death in July 1896 he moved into the New York City apartment at 500 Madison Avenue.

It was in Houston in the early part of 1896 that Rice met twenty-three-year-old Charles F. Jones. Jones was Texas-born; his parents were respectable and well-regarded farmers. When Rice first came to know him Jones was working as a storekeeper in the Capital Hotel, one of the properties Rice owned. The old man took an immediate fancy to the younger one and employed him as his personal clerk. Jones was a fair penman and could operate a typewriter. His zeal to please his rich employer was boundless—he wrote his letters, kept his books, pressed his clothes and blacked his boots. When Rice returned to New York in May 1897 Jones went with him and occupied a comfortable room in the Madison Avenue apartment. For the most part they took their meals together—meals prepared by Rice or Jones or brought in from a near-by Women's Exchange.

Rice's confidence in Jones increased with the passage of time. By 1900 the young man was the millionaire's confidential secretary and virtually sole companion. He had charge of

the old man's bankbooks, he made collections and bank deposits and wrote necessary checks for Rice's signature. The only other servant in the Rice ménage was a colored cleaning woman who, to use her own words, came in two or three times a week to "straighten and tidy up the apartment."

Rice had few callers. There were occasional visits from his former neighbors in Dunellen and rarer ones from business or personal friends he had known in Texas.

There was, however, another and sinister figure who slipped stealthily into and out of the Madison Avenue apartment during the eight or nine months which preceded Rice's death—an enigmatic character named Patrick.

Albert T. Patrick was born in Texas in 1865 and was graduated from the University of Texas. He studied law and was admitted to the Texas bar in 1890. His law practice was not extensive but sufficient to get him into trouble with the courts within two years and invite disbarment proceedings against him. Rather than face the charges, Patrick moved to New York City, where he seems to have experienced no difficulty in securing a license to practice his profession. He was not long in establishing a reputation—an unsavory one for sharp practice—in his new domicile.

Patrick maintained a plausible front. A teetotaler, he was an active member of the fashionable Fifth Avenue Baptist Church and of the Y.M.C.A. He had married shortly after his graduation from college and had two daughters. Mrs. Patrick died in 1896 or 1897, and subsequently Patrick maintained the children with relatives in Austin, Texas. His two sisters had married wealthy men—a most fortunate circumstance for him, as ensuing events proved. After his wife's death Patrick lived in a genteel boardinghouse, where apparently he was well liked and popular.

Patrick was a striking-looking man. He had a good figure, regular features, a firm chin and piercing steel-gray eyes shielded by spectacles or nose glasses. Quite bald, he wore a neatly trimmed russet-colored mustache and beard. He dressed well. He talked well. His manner was quiet but in-

gratiating. To judge by results, he inspired confidence and loyalty in the people with whom he came in contact.

Despite his riches and the apparently placid life he led, the closing years of Rice's life were clouded with a major worry. Before his wife Elizabeth died she made a will in which she represented herself as a citizen of Texas and purported to dispose of approximately one half of Rice's accumulated estate to her relatives. This she did on the theory that both she and her husband were citizens of Texas and under Texas law she was an equal partner-owner of the Rice millions.

Rice claimed to be a citizen of New York, which had no such community-property law. He bitterly resented his wife's action in making such a will and, shortly after her death, instituted a suit in the Federal court at Galveston against O. T. Holt, as acting executor of Mrs. Rice's will, to have it declared void and of no effect.

There was a third interest in this will controversy. In 1891 Rice, implementing an idea of which he had thought and talked much, caused to be incorporated under Texas law "The Rice Institute," a corporation not-for-profit, dedicated to the advancement of literature, science and art. To it he deeded real estate in Houston and elsewhere variously estimated to be worth between a quarter-million and a half-million dollars. In 1893, before Mrs. Rice's death, and in 1896, after her death, he made wills in which he named the Rice Institute as the residuary legatee to about fifteen sixteenths of his estate.

The single legal issue in the contest to invalidate Mrs. Rice's will was a simple one: Was Rice at the time of Mrs. Rice's death a citizen of Texas or a citizen of New York? If the former, one half of the Rice property went to Mrs. Rice's relative-legatees. If the latter, the Rice Institute got practically the entire estate.

To establish that Rice's legal residence was New York and not Texas, it was necessary to take a number of depositions in New York City. Captain James A. Baker, Jr., a lawyer of Houston, Texas, in association with New York lawyers, repre-

sented Mr. Rice in these proceedings. Holt, the executor of Mrs. Rice's will and defendant in the Texas action, engaged Albert T. Patrick to represent him.

There is no evidence that Rice was ever personally present during the taking of these depositions. However, Rice was known to have resented bitterly Patrick's reported methods in the cross-examination of some of the women called by Rice as witnesses and to have held Patrick in utter contempt.

For years Rice had banked with the old and well-known conservative private banking house of S. M. Swenson & Sons. He was a highly regarded and valuable client, well known to the bank's proprietors and employees. Two of the latter—William F. Harmon and Walter O. Weatherbee—had acted as subscribing witnesses to Rice's 1896 will. Weatherbee and John Wallace, a paying teller with over twenty five years' service with the Swenson bank, were familiar with Rice's signature. They had frequently seen him sign his name and had cashed hundreds of his checks.

It was to Paying Teller Wallace's window that a stranger of a not particularly prepossessing appearance came at about 11:00 A.M. on September 24, 1900, to present a check purporting to have been signed by Rice and ask that it be certified.

Seeing that the amount of the check was $25,000, the old bank clerk gave the paper a careful scrutiny. The body of the check was in the handwriting of Rice's secretary, Jones. Wallace was familiar with Jones's handwriting and knew that he usually made out Rice's checks. While Wallace was satisfied that Jones had written the date, the name of the payee and the amount of the check, there was, besides the amount, another item which aroused his suspicion. The name of the payee on the face of the check was "*Abert* T. Patrick"; the endorsement on the back of the check was "*Albert* T. Patrick." And the signature "looked a little queer."

Wallace took the check to Weatherbee's cage and showed it to him. They compared the signature with other signatures of Rice, but apparently were not prepared to declare it was not genuine. There was, however, the question of the faulty

endorsement. Weatherbee told Wallace there would have to be a new endorsement which corresponded with the name of the payee on the face of the check. Wallace returned to his window, handed the check to the waiting stranger and repeated Weatherbee's statement.

The stranger left. In about half an hour he returned with the check, which now bore a second endorsement: "*Albert* T. Patrick." Meanwhile one of the proprietors, Eric T. Swenson, had arrived at the bank. Still unsatisfied, Wallace showed the check to him. Mr. Swenson directed him to telephone Mr. Rice and verify the signature. Wallace called the Rice apartment, and Jones answered the phone. In response to Wallace's inquiry Jones said the check was all right. Wallace then put the certification stamp on the check and left it with Swenson.

Now it was Swenson who hesitated to complete the certification with his signature. He wanted to talk to Rice, so another telephone call was put through. Again Jones answered the phone. Rice, he said, could not come to the phone. Swenson was insistent. Finally Jones informed him that Rice was dead. Swenson drew a series of pen lines across the certification stamp. For a second time the check was returned to the patiently waiting stranger, who, asked to identify himself, gave his name as David L. Short, "a friend of Mr. Patrick."

It was not long before Patrick telephoned. Swenson refused to discuss the matter with him over the telephone. At 2:30 P.M. Patrick—accompanied by a lawyer, John R. Potts—appeared at the bank. Patrick told Swenson he regretted that the bank had not seen fit to certify the check, since it was Mr. Rice's intention that it should be paid. Swenson told him that, as a lawyer, he should know the bank could not pay the check after it had knowledge that Rice, the maker of the check, was dead; there would have to be an administration of Rice's affairs before it could be known to whom the money belonged. Patrick replied that there would be no administration, for Rice had left no property in New York. Patrick added that he had in his pocket another of Rice's checks on

Swenson's bank for $65,000 and an assignment of all Rice's bonds and securities. He produced the assignment and showed it to Swenson. Swenson asked for a copy and, after some haggling, Patrick permitted him to make one.

As Patrick got up to leave Swenson asked if Mr. Rice had been ill long. Patrick replied that he had been ailing for several days. Mrs. VanAlstyne, a friend of Rice, had persuaded him that bananas would be good for him, and the old man had eaten nine of them; that, in Patrick's opinion, had killed him. Swenson asked when the funeral was going to be. Patrick said "at ten o'clock tomorrow morning" (September 25) and he hoped Mr. Swenson or some representative of the bank would be present. Swenson asked where the burial would be, and Patrick answered that there would be no burial; Rice had been a crank on the subject of cremation and had left written directions that his body should be cremated.

Swenson was now far from satisfied. Information previously disclosed to him by Weatherbee of a talk that employee had had with Jones (and which is properly a part of the story to be told later) increased his accumulated suspicions. Feeling that the matter rated a full and immediate investigation, he consulted his lawyers—Bowers & Sands. They placed the matter in the hands of one of their most capable associates, James W. Gerard.[1] After hearing the story Gerard called to his assistance the New York City Detective Bureau and the district attorney.

Events now moved rapidly. Before the Swenson bank episode no notice of Rice's death had appeared in the New York papers, and none of his relatives or close friends had been informed. At 2:40 P.M. on the twenty-fourth Jones sent telegrams to the surviving brother, the two sisters and the nephews and nieces of Rice, advising them of the death and of plans to hold the funeral at ten o'clock the following morning.

Captain Baker, Rice's Texas lawyer, learned of Rice's death and the funeral arrangements on Monday afternoon. Imme-

[1] Later to be famous for his diplomatic service as Minister to Germany in the years immediately preceding the entry of the United States into World War I.

diately he sent Jones a peremptory wire to delay interment and hold everything in abeyance until Thursday. Jones consulted with Patrick, and the hurried arrangements for the funeral were canceled. Early Thursday morning Baker arrived at the Madison Avenue apartment, and he lost no time in getting in touch with the Swensons, Mr. Gerard and the New York authorities.

One disclosure followed another. On Tuesday an autopsy was held. Two coroner's physicians, assisted by an eminent chemist, were in attendance. It was given out that post-mortem examination showed the body of a man remarkably well preserved and healthy for his age, with all the organs sound except the lungs. These, said the report, showed a congestion "as though from some gas or vapor." Traces of mercury were found in some of the organs.

Patrick talked freely—to Gerard, to Baker, to the detectives and to representatives of the district attorney's office. His stories were implausible and not always consistent. From Patrick's statements and the numerous investigations set afoot it was quickly developed that:

1. Not only had Patrick possessed himself of the two checks drawn on Swenson & Sons for $25,000 and $65,000, which exhausted Rice's account there, but he had also presented to the Fifth Avenue Trust Company in New York two checks, one for $25,000 and one for $135,000, which exhausted Rice's account at that bank. (The total of $250,000 was all the cash Rice had in banks in the State of New York.) The check for $25,000 drawn on the Fifth Avenue Trust Company was presented at that bank on Monday morning by the lawyer John R. Potts and was *certified and cashed.* Potts then, at Patrick's request, deposited the $25,000 in another New York bank in a new account designated "John R. Potts, In Trust."

2. Patrick had in his possession a general assignment purporting to have been executed by Rice on September 7, 1900, transferring all his property, real and personal, and wherever located, to Patrick. It was made subject to the condition that Patrick should pay Rice an income of $10,000 a year as long as

Rice should live, and after his death erect a monument over his grave to cost not less than $5,000.

3. Patrick had also a will, dated June 30, 1900, purporting to have been signed by Rice and witnessed by David L. Short and Morris Meyers (a law clerk in Patrick's office), leaving Patrick, as residuary legatee, approximately nine tenths of Rice's property.

4. Patrick possessed an assignment of all Rice's stocks, bonds and other evidences of indebtedness in his safety-deposit boxes in the vaults of Swenson & Sons and the Fifth Avenue Trust Company, and a revocation of a previous order permitting Captain James A. Baker to have access to one of the boxes.

5. Patrick had a letter, dated August 3, 1900, purporting to be signed by Rice and addressed to Patrick, directing that his body after death be not embalmed, but cremated.

6. All the foregoing instruments and papers, in the opinion of persons familiar with Rice's handwriting and a number of the country's foremost questioned-document examiners, were forgeries.

7 Immediately after Rice's death Patrick had taken charge of Rice's effects and removed from the Madison Avenue apartment several hundred dollars in cash, two gold watches and a large quantity of letters and documents which had belonged to Rice.

On October 4, 1900, Patrick and Jones were arrested on charges of forgery and lodged in the Tombs. In the February following, through the efforts of his rich brother-in-law, John T. Milliken of Colorado, bail in the required amount was provided for Patrick. He was released, only to be rearrested on a charge of murder and held without bail.

Jones began a series of statements and confessions immediately after his arrest. The first one was a complete denial of any guilt on his part or on Patrick's. Rice had understood and approved all the questioned documents; all the signatures were genuine. The second statement accused Patrick of having murdered Rice by administering chloroform. In the

third and final statement, made after an attempt at suicide, Jones confessed that he had committed the murder according to a plan conceived by Patrick and at Patrick's direction.

The Trial

On April 25, 1901, a grand jury in and for the County of New York returned into the court of general sessions a formal indictment charging Albert T Patrick with having, on September 23, 1900, willfully, feloniously and with malice aforethought administered to William Marsh Rice the deadly poison of chloroform, or mercury, or both in combination, and thereby caused his death.

On June 10 Patrick was brought to the bar of the court. In a loud and determined voice, which suggested the belligerency that characterized his subsequent efforts to escape the executioner, he pleaded, "Not Guilty." Continuances secured by the defense for the ostensible purpose of "adequate preparation" postponed the trial until January 22, 1902—more than fifteen months after Rice's demise.

Presiding was the Honorable John William Goff, recorder of the County of New York. Judge Goff is remembered as one of New York's great jurists. His work as an assistant district attorney from 1888 to 1891 and his successful direction of the Lexow Investigation into the New York police department won him election to the recorder's office in 1894. During his service in that office until 1906 he presided in many of New York's notable criminal trials.[2] He was widely known for his legal ability, particularly in the field of criminal law and procedure, and was universally esteemed for his integrity, patience, courtesy and impartiality.

Appearing for the People in behalf of New York's famous district attorney, William Travers Jerome, were his principal assistants, James W. Osborne and Francis P. Garvan. Osborne, who led for the State, had served as a principal assistant under

[2] In 1906 Judge Goff was elected a justice of the Supreme Court of New York, where he served with great distinction until his retirement in 1919.

two previous district attorneys—Colonel Asa Bird Gardner and Eugene A. Philbin. He was an experienced, hard-working and successful prosecutor. Garvan was a recent appointee to District Attorney Jerome's capable staff of assistant prosecutors.[3]

Patrick was represented by William F. Moore, Frederick B. House[4] and Frank D. Turner. All were able and well-known lawyers who had participated in the trials of many famous criminal cases.

Prospective jurors were subjected to unusually searching examinations. Many who had formed fixed opinions were excused for cause. Twenty-eight others were eliminated by peremptory challenge. The better part of three days was consumed before twelve men were found and passed by both sides who swore they could try the case solely on the law and the evidence.

Mr. Osborne outlined the case for the People. With excellent strategy he commenced by emphasizing the State's burdens. The State, he said, would call as a witness an accomplice, and the law—which was "only the product of common, human understanding"—was that they could not accept the testimony of an accomplice unless it was corroborated by other evidence tending to connect the defendant with the crime. But, while it was the law that they must scrutinize closely the testimony of an accomplice and find corroboration of it in other testimony, the jurors would naturally bear in mind that "if it were not for the fact that criminals squeal on each other, many crimes would go unpunished."

The People's advocate then proceeded to tell the jury what the State expected to prove. It was an outline of the story already familiar to the reader, with the added testimony of the medical experts and the accomplice, Jones. He explained who Jones was and related how he had insinuated himself into Rice's confidence, how he had been corrupted and dom-

[3] Garvan later became widely known as an Assistant United States Attorney General and the capable president of the Chemical Foundation.

[4] Later a city magistrate.

inated by the stronger-willed Patrick, and how he had finally betrayed his patron to his death.

The People's proof, concluded the prosecutor, outside the testimony of Jones would weave a net of circumstantial evidence around Patrick from which he could not escape. Jones would supplement that evidence by direct testimony, and the aggregate would leave no doubt in the minds of any twelve reasonable men that Patrick had, by means most cowardly and foul, planned and accomplished the murder of William Marsh Rice.

In the presentation of his evidence Osborne deviated from orthodox practice. Instead of first making proof of death, then introducing his direct evidence—the testimony of the accomplice, Jones—and finally supplying corroboration with the remaining circumstantial evidence, he elected to present the witnesses in the chronological order of disclosed occurrences and climax the case with the detailed testimony of Patrick's partner in crime.

Wallace, Weatherbee and Swenson took the stand and told their stories. Each man gave it as his opinion that the name "W. M. Rice" written on each of the questioned documents[5] was not the signature of William Marsh Rice.

Attorney James W. Gerard testified that he saw and conversed with Patrick at the latter's boardinghouse—316 West Fifty-eighth Street—at 11:00 P.M. on the night of September 24. Sergeant Vallely, a detective sergeant in the New York police department, was with him. Gerard told Patrick he had been asked by Swenson & Sons to look into the matter of the check and the assignment which Patrick had shown to Eric Swenson. Patrick said that he might as well tell Baker that he had also in his possession a will in which he was made the residuary legatee of Rice's estate and that he expected the set-

[5] This phrase, which will also be employed hereafter, is meant to designate the two checks on the Swenson bank, the two checks on the Fifth Avenue Trust Company, the general assignment dated September 7, 1900, the will dated June 30, 1900, the two assignments of the contents of the safe-deposit boxes in the vaults of the banks, the revocation of the order permitting Captain Baker to have access to one of the safe deposit boxes, and the "cremation" letter.

tlement of the estate would be in his hands. Sergeant Vallely asked Patrick what the idea was in having both a general assignment and a will leaving him all the property. Patrick laughed and said, "That's a secret."

When Gerard asked what was to be done with the body Patrick answered that he was going to keep it until Thursday morning when some of Rice's Texas relatives would arrive. Then it would be taken to Milwaukee for burial beside the grave of his wife. Patrick did not mention that the body was to be cremated.

On the following Saturday Gerard saw Patrick at Patrick's office. Captain Baker was present. Gerard testified that he heard Patrick say to Baker, "We are here together now. Why can't we settle this matter? Let's go somewhere and settle it all up." Baker, according to the witness, said, "No."

Detective Sergeant James F. Vallely corroborated Gerard's testimony and added that he attended the funeral and the autopsy and saw Patrick and Jones on both occasions. He talked at some length with Patrick, and in one of their conversations Patrick said he was not personally a beneficiary under the 1900 will.

Charles Plowright, the undertaker who took charge of Rice's body, and John S. Potter, the embalmer, were next called. Plowright said he was telephoned to come to the 500 Madison Avenue apartment between 9:00 and 10:00 P.M. on September 23. When he arrived there with Potter he found Patrick, Jones and Dr. Walter Curry. Dr. Curry asked him for a death-certificate blank. Plowright produced one, and the doctor filled it out. Patrick then said, "Plowright, I want you to take charge of the remains of Mr. Rice. He is to be cremated and not embalmed. I would like to have the body cremated as soon as possible." Plowright told him that it would take twenty-four hours to make arrangements for cremation. Patrick asked, "What do you suggest we do with the body?" Plowright said it should be embalmed, and Patrick said to go ahead.

The embalmer, Potter, corroborated Plowright and testi-

fied that he embalmed the body, using a commercial fluid called "Falcon," and gave a specimen of the fluid to Professor Witthaus, the chemist who participated in the autopsy. On Monday afternoon, the witness said, he received a call from Patrick, who directed him to "call off the cremation" because he had received a telegram from some friends who were coming up from Texas.

Potter identified the "cremation letter" which he said Patrick had given him as an authorization to show to the officials at the crematory. The letter was introduced in evidence. It read in part that the purported writer of the letter, Rice, did not want to be embalmed but wanted to be cremated as Colonel Robert Ingersoll had been; that he wanted the cremation to take place immediately after his death and his ashes put into an urn and interred with his wife, Elizabeth Rice.

The next witness was Dr. Hamilton Williams, a physician and surgeon of wide experience and coroner's physician for the borough of Manhattan. He testified concerning the autopsy performed on Rice's body on September 25. Present at the autopsy, besides himself and the morgue attendants, were Dr. Edward J. Donlin, Dr. Henry P. Loomis and Dr. Rudolph A. Witthaus. All the vital organs were exposed for examination. While the intestines were shriveled as the result of contact with the embalming fluid, the witness considered that all the organs except the lungs "were normal for a man of his [Rice's] age." As to the lungs, he found "intense congestion, co-extensive with the lungs" and "a further congestion of the dependent portion of the lungs—what is known as hypostatic congestion." The extent of the hypostatic congestion was normal—"no more than was to be expected under the circumstances."

The witness gave it as his opinion that the cause of death was in the lungs. "Seeing this intense congestion in the lungs," said the doctor, "the question arose in my mind: what could have caused that intense congestion? I decided some irritant gas form had gotten in . . . the whole lung—and that irritant had brought about that congestion. In my opinion, the cause

of death was the congestion of the lung brought about by the inhalation of some gaseous irritant."

The doctor outlined the properties of chloroform: it is a liquid with rather a sweetish, hot taste and an aromatic but not unpleasant smell. It rapidly vaporizes to the heat of the body. "You could, of course," said the doctor, "swallow liquid chloroform and some of it might get as far as the upper windpipe but that is all that would go down; the spasm excited by such an irritation would prevent any more from going down. The effect of the irritant is to bring an increased supply of blood to the part, and that increased supply of blood to the part is what is known as congestion or hyperemia of that part. Chloroform in the form of vapor breathed into the lungs is unquestionably an irritant, and will bring about a high degree of congestion."

Dr. Williams went on to say that a congestion of the lungs caused by an irritant poison is typically different from a congestion caused by pneumonia or bronchitis—the latter would be limited to particular areas and not coextensive with the lungs. The doctor found a "small patch" of consolidation in one of the lungs, but that, in his opinion, could not in any way have contributed to cause death; in fact, it was probably caused by the inhalation of the irritant.

Dr. Williams' clear-cut testimony was an essential part of the People's case. Defense Attorney Moore realized this and subjected the witness to a well-prepared and skillfully presented cross-examination. He produced dozens of medical authorities from which he quoted extracts designed to force the witness to modify his conclusions. Was it not true that congestion of the lungs could result from a variety of causes? Yes, said the witness, *but not a congestion coextensive with both lungs,* as was the case here. Were not the eyes, nose, mouth and face normal, giving no indication of the cause of death? The witness admitted that was true. If chloroform had been administered by placing over a person's nose and mouth a sponge saturated with liquid chloroform and held in a towel molded into the shape of a cone, would not the ad-

jacent parts of the face have been blistered? Would there not have been some inflammation and congestion of the eyes? Not necessarily, replied the witness. It would depend on the degree of the liquid saturation and whether any of the liquid was brought into contact with the face or the eyes.

And so the duel between advocate and witness went on, but the witness was unshaken. On redirect examination he reinforced his direct testimony with an answer that, "considering what I saw at the autopsy, I could not imagine a cause of death other than an irritant gas."

Dr. Donlin's testimony in general corroborated that of Dr. Williams. He said the lungs were "congested extensively," and that there was a "slight area" of consolidated lung tissue in the lower lobe of the right lung. He found the heart normal, "with the exception of a slight contraction of the aortic and pulmonary orifices." The brain, he said, was "slightly oedematous and pale." As to the kidneys, "the capsules were not adherent, the surfaces were granular—the cysts being thinner than usual." These variations from normal were to be seized on by defense counsel and defense medical experts and made the basis of a claim that Rice's death could be accounted for by the alleged diseased condition of these organs. But Dr. Donlin maintained that "for purposes of death I would say that all of the organs were normal with the exception of the lungs." Like Dr. Williams, he believed that the condition of the lungs could have been caused by the inhalation of an irritant gas, such as chloroform, and he knew of nothing else that would cause such a general congestion. The cross-examination of Dr. Donlin followed the pattern set in that of Dr. Williams. The doctor, in spite of two hours of incessant hammering, stuck to his guns.

Dr. Henry P. Loomis, a physician of long experience and a professor of pathology in New York University, supported Drs. Williams and Donlin. He had examined the lungs and other organs of Rice's body after the autopsy. His opinion, given without reservation, was that a condition of congestion coextensive with the lungs, such as was found to be present,

could have been produced only by the inhalation of an irritant gas such as chloroform. Neither pneumonia nor bronchitis would have produced such a general condition of congestion.

The qualifications of Dr. Rudolph A. Witthaus, the expert chemist called by the People, were most impressive. He had pursued long courses of study in America and abroad and was a professor of chemistry at Cornell University. He had written four widely read textbooks on chemistry. He had appeared as a witness in all the important poisoning cases tried in New York during the two preceding decades—the Molineux case, the Harris case, the Buchanan case and a score of others.

Dr. Witthaus testified he had received from Plowright and Potter a specimen of the Falcon fluid used in the embalming of Rice's body. His chemical analysis showed there was no mercury in it. He said the only effect of the embalming fluid on the lungs would have been to bleach them. He had analyzed the stomach, intestines, liver and kidneys of the deceased. From the intestines he got a half grain of mercury and from the kidneys a quarter grain. There were small amounts—too minute for measurement—in the liver and stomach.

Cross-examination developed that mercury is often administered in medicinal doses for a variety of ailments. When so administered it will frequently remain in the organs of the body for a month or longer. The quantity of mercury found in the organs of Rice, said the doctor, was "hardly enough" in itself to have produced death.

A chemist engaged in the manufacture of the Falcon embalming fluid corroborated Professor Witthaus' testimony that the solution contained no mercury.

Two employees of the Chambers Building testified that shortly after midnight, September 24-25, in making their nightly rounds on the thirteenth floor where Patrick had his law offices, they discovered a large quantity of water on the toilet-room floor. Their investigation revealed that the toilet had been clogged by an attempt to flush a large quantity of paper such as lawyers use in the preparation of legal docu-

ments. Patrick was in his office, and they questioned him. He admitted he was responsible for the damage and apologized for the trouble he had caused. One of the witnesses said Patrick offered him a silver coin, which he refused.

Captain James A. Baker, Jr., of Houston was one of the People's most important witnesses. Under Mr. Osborne's skillful direct examination he unfolded a tale which told heavily against Patrick. Baker had known Rice for more than forty years. He had also known Patrick during the two years Patrick had practiced law in Houston and had met him in New York in 1898 and 1899 in connection with the taking of depositions in the Rice-Holt contest. Patrick had frequently approached him with propositions to settle the case—offers which commenced at $500,000 and ended at $250,000. Baker did not communicate these offers to Rice because he knew that to do so would be a waste of time. So far as Baker knew, Rice and Patrick had never met and Patrick had never had any relations with Rice except as a lawyer opposing him in the Rice-Holt suit.

On Thursday morning Baker and Norman S. Meldrum called at the Madison Avenue apartment. Patrick, Jones and William M. Rice, Jr.—a nephew of William Marsh Rice—were there, with Patrick seemingly in charge. After greeting Baker, Patrick said he would like to talk to him and suggested they go into one of the back rooms. Baker asked if there was any objection to Meldrum being present, and Patrick said he preferred to talk to Baker privately. They retired and talked together for about half an hour. Patrick said he supposed Baker was surprised to see him in charge. Baker agreed that he was. Patrick said he thought some explanation was due; he explained that after the depositions in the Rice case had been completed he had felt he should take up the matter of settlement directly with Rice. Patrick knew that Rice felt bitterly toward him, so as a ruse he placed an advertisement in a New York paper calling for the heirs of Mrs. Rice. The ad came to the notice of Rice, who answered it. Patrick then made himself known to Rice, and they became friendly and well ac-

quainted. Patrick said he made a profound impression on Rice, and Rice retained him as his attorney in all his matters except the Rice-Holt case. Rice told him also that he had lost all confidence in Baker, but Patrick had done all he could to reinstate Baker in the old man's favor.

Captain Baker testified that Patrick then told him Rice had made a will in 1900 in which he named Patrick as his residuary legatee, and Baker, Rice, Jr., and Patrick as executors. Baker commented that it seemed strange, if Rice had lost confidence in him, that he would make him an executor of his will. Patrick replied that he had persuaded Rice that Baker should be named an executor.

Baker asked Patrick how Rice came to name him as his residuary legatee, and Patrick answered: "The old man became stuck on me; thought I was the most wonderful man in the world." He added that he had frequently discussed the will with Rice; that Rice wanted him to distribute the money to charity, but under the terms of the will he was under no obligation to do so.

Patrick also said that the executors would get a commission of five per cent of the estate, but he did not intend to qualify, and that would leave just that much more for Baker and Rice, Jr.

In further conversation, Patrick told Baker it would be necessary to dispose of Mr. Rice's remains and showed him the "cremation letter." Baker showed it to Rice, Jr., who said he neither consented to nor opposed the cremation. Patrick then said he would go ahead and arrange to have the body cremated.

Baker asked to see the 1900 will and assignment. Patrick said the police were "nosing around" his office, and he had taken the papers to his home. Baker and Meldrum went with Patrick to his apartment, where Patrick exhibited and permitted them to read the will and assignment. He refused, however, to let them make copies. Baker asked Patrick how the old man ever came to sign a paper disposing of all of his property under an agreement to be paid $10,000 a year for

life, and Patrick answered that the old man was sick of worrying and tired of life.

"In view of your antagonistic relations with Rice," Baker asked, "if you expected this will and assignment to hold up in any court in Christendom, why did you not have some friends of Rice—Swenson, for instance—witness them?" To this Patrick replied, "I ought to have done that, I expect, but you know Rice was very peculiar and wanted our relations to be secret. So far as I know, no living man ever saw me in the presence of Rice unless it was C. F. Jones and I don't know that he ever saw me with him."

Patrick said he had taken a lot of paper and securities from Rice's apartment, and Baker told him that, as he (Baker) was an executor under both wills, the papers and securities should be turned over to him. Patrick promised to surrender them to Baker and made an appointment to meet Baker in the afternoon. They met as agreed, and together they listed the papers and securities which Patrick produced. The securities inventoried amounted to "several hundred thousand dollars." These were put in a hotel safe for temporary safekeeping and removed the next morning to a safe-deposit vault.

The next day, Friday, Baker again saw Patrick and at his request Patrick gave him the two checks that had been drawn on Swenson's bank, the check on the Fifth Avenue Trust Company for $135,000, and the two gold watches and $10.00 of the cash he had taken from the Rice apartment on the night of Rice's death.

Baker next arranged to examine the contents of Rice's box in the Fifth Avenue Trust Company vaults. Patrick, Potts, Baker, Meldrum, Gerard and some of the bank officials were present. The securities in the box were taken out and inventoried. They aggregated $2,750,000.

Several times Patrick told Baker that he saw no reason why any litigation should grow out of "the situation"; after Baker had completed his investigation it should be possible to settle their differences. Baker replied that he would never consent to the probate of the 1900 will; he believed the 1896 will to be

Rice's last will and testament. Patrick then said that, since he knew Rice had thought a lot of the Rice Institute, he would give it whatever was right—three or four or five million dollars.

Referring to the checks on Swenson & Sons and the Fifth Avenue Trust Company which aggregated $250,000, Patrick explained to Baker that he and Rice had agreed to settle the Rice-Holt litigation for $250,000, and he thought those checks had been sent to him by Rice "to consummate that settlement."

In concluding his testimony, Baker gave it as his opinion that none of the questioned documents had been signed by Rice.

Baker was a well-educated and shrewd lawyer and made a careful, deliberate and assured witness. Mr. Moore's cross-examination, while exhaustive and well conducted, yielded nothing of importance. He did bring out that since the return of the indictment a settlement of the Rice-Holt case had been negotiated for a payment of $200,000.

Norman S. Meldrum, president of a New York securities house and an old friend of Rice, followed Baker on the stand. In his opinion, Meldrum said, none of the questioned documents bore the signature of William Marsh Rice.

As soon as Meldrum learned of Rice's death on Tuesday afternoon he called the Madison Avenue apartment, he said. Jones answered the telephone and referred him to Patrick. Meldrum telephoned Patrick, and Patrick came to Meldrum's rooms in the Waldorf Hotel. Patrick said Swenson was making a good deal of fuss about Rice's death and had called in the district attorney, but when Baker arrived in New York "everything would be all right" after Patrick "explained matters to him."

Patrick told Meldrum of the 1900 will in which Patrick was named as residuary legatee. Rice, he said, had taken a very strong liking to him and had the utmost confidence in him. The checks on Swenson's and on the Fifth Avenue Trust Company had been sent to him without any explanation as to

what they were for, and when he presented the checks to the banks on Monday morning he "thought there was no harm in it if the banks did not know that the old man was dead."

Meldrum described the meetings at 500 Madison Avenue, at Patrick's apartment and at the bank vaults at which he was present on Thursday and Friday and confirmed Baker's testimony.

John R. Potts, the lawyer friend of Patrick who had figured in the presentation of the $25,000 check to the Fifth Avenue Trust Company, was called as a People's witness. He testified that he had known Patrick in Texas and had been on particularly intimate terms with him since Patrick came to New York in 1892. They occupied the same suite of offices and shared office facilities and expenses.

Potts had never seen Patrick and Rice together. However, he knew Jones, whom Patrick had introduced to him as Mr. Rice's secretary.

On September 17, Potts said, he lent Patrick $150, and on that day Patrick told him of being named as residuary legatee in the will of a rich client. Potts said he didn't believe it. Patrick said, "I will show you." Together they went to a safe-deposit company's vaults at 220 Broadway. Patrick got out a box and from it produced a will, an assignment, a paper evidencing a settlement of the Rice-Holt contest and two or three blank checks—all purporting to have been signed by W. M. Rice. Potts read over the will and exclaimed, "Patrick, you are a lucky dog." Patrick said he could use the blank checks if he wanted to, but Potts said he would not do it if he were in Patrick's place. Patrick then said that he "practically owned the entire Rice estate," worth between five and eight million dollars, and would take possession of it on Rice's death.

How had Rice come to make Patrick his residuary legatee? Potts asked. Because of the regard and esteem Rice had for him, Patrick answered, and because he knew Patrick would "perpetuate his memory." Patrick added that Rice was in poor health and liable to die at any time; he had this from his friend Dr. Curry, who was Rice's physician.

On September 24 Patrick showed Potts four checks which he said Rice had sent to him the previous Saturday to settle the Holt case. Would Potts step over to the Fifth Avenue Trust Company and have one of them certified? Potts agreed, and Patrick gave him one of the checks. It was for $25,000. After cashing the check Potts, at Patrick's request, deposited the $25,000 in a new bank account in the name of "John R. Potts, In Trust."

The witness described his afternoon trip with Patrick to see Mr. Swenson, and a later trip with Patrick, Baker, Gerard and Meldrum to the safe-deposit box.

At Patrick's request Potts attended Rice's funeral and there Patrick told him the police evidently believed that Rice had not died from natural causes, but he was certain he could dispel any such notion—there was not the slightest foundation for it. Patrick said a detective had spoken to him at the funeral and asked him to come down to headquarters after the service. Would Potts go with him? Potts did and thereafter acted as one of Patrick's attorneys. Further testimony was excluded on the ground of the attorney-client relationship.

On cross-examination Potts said he kept the $25,000 in the special account for seven or eight months and then, on Patrick's written order, withdrew the money and paid it to a court-appointed temporary administrator of Rice's estate.

John E. Whittlesley testified that he had known Rice intimately for many years. He knew Patrick also—had engaged him on one occasion to collect a bill.

In February 1900, the witness said, he had a conversation with Patrick about Rice. Patrick said he was acting for the attorneys for Mrs. Rice's heirs and wanted Whittlesley to help him make a settlement and earn a $10,000 contingent fee. Patrick said his people would settle for $250,000. Whittlesley asked him why he did not take the matter up with Baker, and Patrick said Baker did not dare to speak to Rice about it. Whittlesley then asked why Patrick did not himself see Rice, and Patrick answered that he did not know Rice well enough.

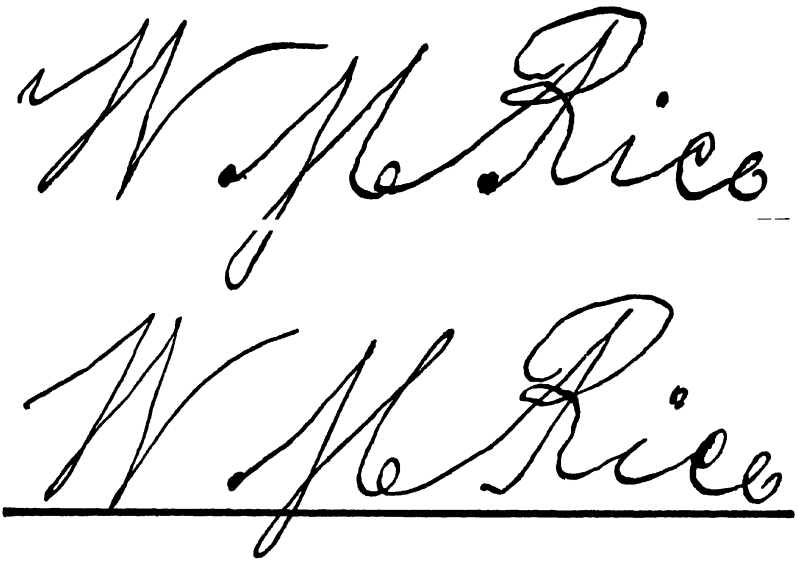
Patrick explained the nature of the suit and proposed settlement, and Whittlesley went to see Rice. Rice told him the claim of Mrs. Rice's heirs was a fraud and he would never pay a cent in settlement. In the course of the conversation Patrick's name was mentioned. Rice became very angry and said that Holt had employed Patrick to do the kind of work he would not do himself. Whittlesley reported this conversation to Patrick.

A reporter on the New York *Times* testified that in a conversation on September 27 Patrick told him that at Rice's direction he had carried on secret negotiations and settled the Rice-Holt litigation for $250,000 and the four checks aggregating that amount had been sent to him by Rice to consummate that settlement.

A reporter on the New York *World* related a conversation with Patrick on September 25 in which Patrick said he was not a beneficiary under Rice's will, but that Rice had created a trust and had sent him the four checks on September 22. Patrick had cashed one of the checks on the twenty-fourth and put the money in a bank to his own account in order that he might have the means to defend Rice's plan to establish the trust which Rice wanted Patrick to administer.

Fifteen witnesses—old friends and business associates of Rice, and bankers and bank employees who had done business with him and were familia with his signature—testified that in their opinion none of the questioned documents had been signed by Rice. There were also a number of witnesses to identify canceled checks, letters and other writings and testify that these did bear Rice's genuine signature. (These became "specimens" or "standards of comparison" for the use of the handwriting experts in passing on the genuineness of the alleged signatures on the questioned documents.)

The State called six witnesses who qualified as handwriting experts. The best-known and most persuasive of these were Albert S. Osborne of New York and John F. Tyrrell of Milwaukee. A specialist in document photography had enlarged the signatures on the disputed documents and on the stand-



TWO FORGED SIGNATURES FROM THE WILL OF 1900.

ards of comparison by ten and a half diameters. All the experts gave it as their positive and unqualified opinion, based on a comparison of the originals and the enlargements, that the signatures on the questioned documents were not the signatures of William Marsh Rice.

Their opinions were supported by detailed reasons. The genuine signatures on the standards were "natural," "without studied deliberation," and showed "the slight variations characteristic of normal handwriting." All of them exhibited a "characteristic shading in the down strokes." Moreover, the enlargements of the admittedly genuine signatures showed no "tremor" and no "breaks in continuity," no "patchings" or "pen-lifts." The questioned signatures, on the other hand, showed a "cramped and unnatural writing," a "waviness," "tremor," "breaks in continuity," "retouchings," "pen-lifts" and a complete absence of shading in the down strokes. There was unmistakable evidence, said all the experts, that the signatures on the questioned documents had been traced from genuine signatures. Two of the questioned signatures were identical in every respect—height, length and slant of letters.

TWO AUTHENTIC SIGNATURES OF SAME DATE AS WILL OF 1900.

Four others, evidently traced from another genuine model, showed the same exact dimensions and slant. Three others, palpably traced from still another genuine model, matched to a hair line. The "dots" which Mr. Rice was wont to put over his *i*'s were "sloppy"—oftener than not a dash rather than a dot. In the disputed signatures all the dots were small globes, evidently made with meticulous care.

In vain did Mr. Moore attempt to break down these well-prepared and experienced witnesses. His long cross-examinations evoked from the experts more and more statements sustaining their opinions. At the end of his questioning the examiner's position was worse than when he started.

All the foregoing evidence was produced before the People's star witness, Charles F. Jones, took the stand. The district attorney's strategy, as has been stated, was to prove a case against Patrick without Jones's testimony and thus meet the rather strictly applied New York law that a conviction cannot be sustained on the uncorroborated testimony of an accomplice.

Jones's story was a long one, and it was, if believed, the

story of a murder as ruthlessly plotted as any recorded in the bulging chronicles of crime. In synopsis (for the actual telling of it took nearly a week) here it is:

Jones came to New York with Rice in May 1897 and from that time until Rice's death lived in the Berkshire Apartments. He was Rice's confidant and sole companion.

His acquaintance with Patrick dated from a call Patrick made at the Rice apartment in November 1899. At that time Patrick gave his name as Smith and said he wanted to see Rice about some cotton business. Rice had gone to bed, and Jones refused to disturb him.

Patrick returned a week later and asked to see Rice. Again Jones told him the old gentleman was resting and could not be disturbed. A few days later Patrick called again. This time he gave his real name and said he was a lawyer representing Holt in the will litigation and wanted to talk to Rice about making a settlement. Jones told him Rice felt so bitterly against Patrick because of the way he had examined some of the women witnesses in the taking of the depositions that it would be useless to talk to Rice. Patrick asked if Whittlesley might not get somewhere if he talked to Rice. Jones said he did not think so.

The evidence in the will case, Patrick said, was all against Rice, and the only thing needed to clinch it was a letter signed by Rice admitting he was a citizen of Texas. Patrick asked Jones what salary he was getting. When Jones told him $55.00 a month and expenses Patrick said that such paltry pay was an outrage; the work Jones was doing was worth double that. If Jones would go into a business deal with Patrick he would be well taken care of; Patrick "would make a smart man out of him." Jones was interested.

Patrick proposed to pay Jones $500 if Jones would write the kind of letter he wanted on Rice's stationery—a letter to Captain Baker reciting that Rice had lost confidence in the lawsuit; that all his interests were in Texas; that he had actually always been a resident of Texas and wanted to settle the Holt litigation now so that he could go back there. Pat-

rick's idea was not to mail the letter, but to produce it during the trial with some plausible explanation as to how it had come into his possession.

Jones prepared a draft of such a letter with a purported signature of W. M. Rice and submitted it to Patrick. He demanded a cash payment from Patrick of $250 and, when Patrick would not give it to him, refused to give Patrick the letter. Jones kept the letter for a few days and then destroyed it.

Despite his failure to cash in on Patrick's first proposition, Jones continued on friendly terms with Patrick. They talked about Rice's affairs. Jones told Patrick all he knew about Rice's properties, his business associates in Texas and New York and his New York banking connections, and showed him the will which Rice had made in 1896. He allowed Patrick to go through all Rice's files, and, at Patrick's request, gave him dozens of papers containing Rice's signature.

Sometime in February or March 1900 Patrick showed Jones a draft of a will which Patrick said he had drawn, in which Rice disposed of all his property. After numerous specific bequests to relatives and friends—the same persons named in the 1896 will—the remainder was divided equally between Patrick and the Rice Institute. Patrick asked Jones to copy the will on Rice's typewriter and name himself as one of the witnesses. Jones refused to do so, saying he wanted to be a beneficiary.

He copied the will, however, as Patrick directed, without naming himself as a witness. When Patrick saw the copy he said it was full of mistakes and would not do. He would have Meyers, one of the clerks in his office, copy it. Later Patrick showed him a copy which he said Meyers had made.

Patrick explained that he had provided bequests for all Rice's relatives and friends larger than they were to get under the former will. This would make them just as anxious as he was to sustain the later will. Jones asked if Patrick proposed to destroy the 1896 will, and Patrick said no. He would use the 1896 will to make the heirs accept the 1900 will

which gave them so much more. "Every man in Texas has his price," Patrick said.

They considered witnesses for the new will. Weatherbee and Harmon, employees of the Swenson bank, had witnessed the 1896 will, and Patrick thought it would be a good idea to have the same persons as witnesses to the new will. Jones undertook to sound out Weatherbee's reaction to the suggestion.

Patrick showed Jones a dozen different drafts before the will of June 30, 1900, assumed its final form. In the final form Jones was not named as a beneficiary. Patrick said he was too close to Rice, and the claim might be made that the will was executed under duress or undue influence. He told Jones not to worry—he would be "well taken care of."

Sometime in May Jones made a luncheon appointment with Weatherbee and unfolded his "proposition." Rice was in the habit of waking up suddenly and for some time afterward was not exactly conscious of what he was doing. At such a time, with Weatherbee present, a draft of the will would be presented to Rice. In his stupefied condition Rice would sign it, and Weatherbee and someone else would witness it. As his reward Weatherbee would be named one of three coexecutors and share in a healthy five-per-cent commission on the value of the estate. Weatherbee scorned the suggestion and said he was surprised that Jones would make such a proposal.

Jones reported to Patrick his failure with Weatherbee. Patrick directed him to drop the matter and promised to get David L. Short and Morris Meyers to act as witnesses. Patrick would have Short made a commissioner of deeds for the state of Texas, and Jones could introduce him to Rice in that capacity; in that way Short would get to know Rice and become familiar with his signature. Patrick asked if Jones could not arrange to have Meyers meet Rice. Jones said he could; at an appropriate time he would introduce Meyers to Rice as his own friend.

Jones had met Meyers during the first part of March in Patrick's office. Later he discussed with him in Patrick's office

the plan for having him meet and get acquainted with Rice and later become a witness to his will.

Short and Meyers first came to the Madison Avenue apartment on May 26. Jones introduced them to Rice—Short as a commissioner of deeds of Texas and Meyers as a friend. Short took an acknowledgment of Rice's signature to a document to be sent to Texas and affixed a seal. Meyers and Short called together at the apartment about every two weeks thereafter. Short to take acknowledgments and Meyers as the friend of Jones.

On June 30, 1900—the supposed date of the execution of the will—Meyers and Short called on Rice, and Short took acknowledgments to some deeds. Jones swore he was present the entire time that Meyers and Short were there. He was positive Rice did not at that time sign his name to any of the pages of the so-called will and that neither Short nor Meyers signed as witnesses to any such instrument. Two weeks before Rice's death Jones saw the draft of the June 30, 1900, will in Patrick's office, and at that time it bore no signature of W. M. Rice. After Rice's death Patrick told Jones that Short and Meyers had written their names on the June 30, 1900, will the day after Rice died.

Patrick discussed with Jones various assignments—one of property in the Fifth Avenue Trust Company deposit vaults, another of Rice's Texas real estate, another of Rice's Louisiana real estate, another of Rice's New Jersey real estate, another of Rice's property at the Swenson bank and another which was a general assignment of all Rice's property. Jones typed some of these, Meyers wrote the others. Patrick showed Jones also an unsigned draft of an agreement to settle the Holt litigation. At Patrick's request Jones gave Patrick a bottle of the ink used at the Madison Avenue apartment. It would never do, Patrick said, to have the various documents, supposedly executed at 500 Madison Avenue, signed with the wrong ink.

Before Rice's death Patrick requested and received from

Jones three checks which bore the genuine signature of Rice. Two were payable to A. B. Cohn, an agent of Rice in Texas, and one to Jones. All were for small amounts. Jones gave Patrick also three checks similarly made out but without Rice's signature. When Patrick returned the checks to Jones all six of them bore the signature "W. M. Rice." Three were genuine. Three were forgeries. Jones destroyed the genuine checks and mailed Cohn the two forged checks payable to him and retained the forged check payable to himself. *All the forged checks were put through the banks in due course and paid.* The purpose of this maneuver, as explained to Jones by Patrick, was that, if at any time thereafter any question arose as to the genuineness of signatures on the will and other papers, these three forged signatures could be used as bases of comparison with the other forged signatures of Rice.

Patrick told Jones he had put an advertisement in the New York *Tribune,* asking that the heirs of Elizabeth Rice communicate with "Justice" at 463 Lexington Avenue. He asked Jones to see that the ad was called to Rice's attention. Jones did so. Patrick then had Jones write a letter, purporting to come from Rice and addressed to "Justice," stating that the writer was the husband of Elizabeth Rice and could probably give the information desired. Jones gave Patrick the letter unsigned, and Patrick said he would arrange for the signing of it. He explained that he intended to use it only if he encountered difficulty in probating the will.

Jones, at Patrick's suggestion, typed a score or more letters to Rice's business associates in which Rice referred to Patrick as his agent, friend and lawyer. None of these was mailed, but carbon copies were put in Rice's files so they might be found there after his death. The plan was not fully carried out. On Sunday night after Rice's death Patrick took them out of the files and carried them away with other papers in a valise.

It was at Patrick's request also that Jones addressed and mailed to Patrick at his office a number of empty envelopes which had Rice's return address printed in the upper left-

hand corner. These, explained Patrick, would indicate that he carried on an active correspondence with Rice.

Jones communicated with Patrick continuously. Every letter and telegram Rice received was shown to Patrick. When Rice's oil refinery in Texas burned down on September 16 and Rice began corresponding about putting up $250,000 to rebuild it, Patrick was promptly advised.

When during March Jones was taken ill Patrick recommended that he call Dr. Walter Curry. Dr. Curry called at the Madison Avenue apartment, prescribed for Jones and was introduced to Rice. Through Jones's touting Curry was soon accepted by Rice as his physician.

Sometime in the early part of August Patrick asked Jones how Rice's health was. Jones said he was better than he had been. Patrick said, "Don't you think Rice is living too long for our interest?" Jones replied, "It does seem that way." Patrick then said that, if Jones would let him in some night, he would put Rice out of the way. Jones said, if anything like that was to be done, Dr. Curry would have to do it, but Patrick assured him that "Dr. Curry wouldn't do a thing of that kind."

The pair discussed the possibility of using chloroform. Patrick had a magazine article which they studied together to learn how to use chloroform and how it would act. Patrick asked Jones if he knew of any place where he could get chloroform, and Jones said he thought he might get some from the nurses at the Presbyterian Hospital, where he had recently been a patient. Jones asked why Patrick shouldn't get it, and Patrick said, "It would excite suspicion," and that Jones should try to get some. Without telling Patrick, Jones wrote to his brother in Texas, sent him $5.00 and got back by express a wooden box containing a four-ounce bottle of chloroform.

After Jones had received the chloroform, Patrick directed him to ask Dr. Curry about its effects. Jones casually inquired of Dr. Curry if it would be difficult after death to tell whether a person had died from the effects of chloroform. Dr. Curry

said it would be difficult, particularly if the heart were affected. Jones repeated this to Patrick.

They considered laudanum also, and Patrick said he could probably get some laudanum at Coney Island but that Jones had better get it. Jones again wrote to his brother in Texas and in due course received a second express package containing a one-ounce bottle of laudanum and a two-ounce bottle of chloroform.

Patrick told Jones he should give Rice some mercury to "break him down" and wanted to know if he had any. Jones remembered that Dr. Curry had given him mercury tablets when he was sick. Jones had the prescription refilled and about September 1 commenced giving Rice two pills each day, assuring him that the mercury would be good for him. The immediate effect was to cause a diarrhea. When the first prescription was exhausted, Patrick provided some mercury pills which were stronger, and Jones gave them to Rice. His diarrhea increased and Jones notified Dr. Curry without mentioning the mercury.

About ten days before Rice's death a friend of his, Mrs. VanAlstyne, called. She said she had had indigestion and had found that bananas were good for it; she recommended that Rice get some bananas and eat them. Jones, at Rice's request, procured a dozen and a half. Rice baked and ate five of them and later ate four more raw. They made him very sick. They "clogged his stomach," and Jones gave him an extra dose of the mercury pills "to clear him." When Patrick heard of this he scolded Jones, saying, "It was silly to have given him the mercury pills; if he had been left alone he might have died from eating the bananas." Dr. Curry gave Rice a prescription and by Wednesday or Thursday before his death had succeeded in checking the diarrhea. Jones gave Rice no more mercury after that.

Friday night the old man slept but little. On Saturday he was quite ill and at times delirious. During the day Dr. Curry called twice, the first time about eleven, the second time in the afternoon. In the forenoon two of Rice's men

friends called. Rice tried to greet them, but staggered and was scarcely able to walk. He talked irrationally. During the afternoon Mrs. Carpenter, a friend of Rice from Dunellen, called. While she was there the old man seemed unable to talk and at times cried.

Jones kept Patrick closely advised of these developments. In the late afternoon they met by appointment at an out-of-the-way restaurant and discussed Rice's condition. They talked also about a draft which had come from Texas for $25,000, the first of a series of ten such drafts which Rice had promised to honor to rebuild the destroyed Texas oil refinery.

Jones returned to the apartment, and Patrick went to the Y.M.C.A., where Jones was to call him if necessary. When Jones reached home he found Dr. Curry there. Rice was asleep in his chair. After Dr. Curry had gone Jones left the apartment and telephoned Patrick, who advised him to "leave matters alone" because the old man would "probably drop off in the condition he was in." When he returned to the apartment Jones was surprised to find that Rice was up and wide awake. He was "pulling the furniture around and didn't seem to know what he was doing." Finally Rice lay down on the bed and went to sleep. He slept soundly until eight o'clock Sunday morning.

On Sunday morning Jones went to a restaurant for breakfast and afterward telephoned Patrick and described Rice's condition. Patrick ordered Jones to get hold of Dr. Curry and have him examine Rice, then report immediately what the doctor said. Jones summoned Dr. Curry, who arrived between 10:30 and 11:00. Rice told him he was feeling better but was still weak. The doctor took his pulse and said he was doing well enough; he was to rest and not eat anything heavy. The doctor left, and Jones again repaired to the telephone to bring Patrick up to date.

Some time earlier Patrick had told Jones that he had a quantity of oxalic acid at his office. Now he directed Jones to come to the office at 2:00 in the afternoon to get it. On the way Jones was to buy two ounces of powdered alum to mix

with the acid. And he must study the encyclopedia entry on oxalic acid. Jones followed instructions. At 2:00 he met Patrick at the office and reported what he had found out about oxalic acid. Patrick gave him the bottle of acid and told him to mix the alum with it in a glass of water and give it to Rice; the effect would be to paralyze the heart.

Jones returned to the apartment and mixed the acid and alum with water. He told Rice he had something that would do him good and offered him the concoction. Rice took a mouthful and immediately spat it out, saying it was "awful" and he would not drink it.

About 6:30 Jones left the house and had dinner at a restaurant, then telephoned Patrick and arranged to meet him at Seventh Avenue and Fifty-sixth Street. It was dark when Jones reached the rendezvous. He reported on Rice's condition, and Patrick said, "Now, Jones, everything is going along fine so far, but I am a man of family and I can't afford to do this that I have said I would do. If Rice poisoned his wife [a suggestion utterly without foundation], it would be no sin to put him out of the way." He told Jones, "You will have to administer the chloroform." At first Jones refused. Patrick told Jones if he did not do it the drafts from Texas would come in and be paid and all the money Rice had in the bank would be lost.

"After considerable persuasion" Jones agreed to "do the job," and Patrick gave him minute instructions. Jones returned to the Madison Avenue apartment. Rice was asleep. Jones found a sponge, made a "cone" out of a towel, saturated the sponge with chloroform and placed it in the small end of the cone. He put the cone over his own face to test it and "got a very strong effect from it." Then he poured a little more chloroform on the sponge and slipped quietly into the room where the old man was sleeping. Jones placed the cone firmly over Rice's nose and mouth and "ran out of the room."

Patrick had advised him to stay out of the room for thirty minutes. While Jones was watching the slow passage of time the doorbell rang. The ringing was incessant, and Jones got

an impression that two ladies were at the door. He kept quiet, and finally the ringing ceased.

When the half hour was up he returned to Rice's room. The old man had not moved. The cone was on his face just as Jones had left it. Jones removed it and saw that Rice was dead.

Jones took the towel with the sponge still in it and went to the kitchen. There he lifted one of the lids of the range, stuffed the towel inside, put a match to it and "burned it up." Then he opened all the windows. A few minutes later he called Patrick on the telephone and said to him, "Mr. Rice is very ill"—a code phrase previously agreed on to indicate that Rice was dead.

Patrick told Jones to get in touch with Dr. Curry, and Jones asked the elevator boy to call the doctor. Twenty minutes later Patrick and Dr. Curry entered the apartment together. The doctor examined Rice's body and pronounced him dead. Plowright, the undertaker, was called and responded immediately. Jones heard no part of the conversations between the undertaker and Patrick and Dr. Curry.

After the body had been removed and the undertaker had gone Jones and Patrick went into the room where Rice kept his papers. Patrick examined everything. He found $450 in bills, $8.00 or $9.00 in silver and two watches. These, with "a lot of papers," he put in a valise and carried out of the apartment. He told Jones to stay there and promised to return in the morning.

Jones slept soundly until Patrick came in at eight o'clock the next morning. With him Patrick brought six blank checks signed "W. M. Rice." He looked them over in Jones's presence and remarked that the signatures on two of them were not very good. Four of the checks he handed to Jones to be filled in at his dictation. All were made payable to Patrick. Two were on Swenson's bank, one for $25,000 and one for $65,000, and two were on the Fifth Avenue Trust Company, one for $25,000 and one for $135,000. When Jones finished filling in the checks Patrick picked them up and left.

Jones's account of the telephone calls he received about 10:30 from the Swenson bank matched exactly the previous testimony of Wallace and Swenson. After these calls Jones immediately picked up the phone and reported them to Patrick.

Up to this time none of Rice's relatives had been notified of his death. In the early afternoon Patrick telephoned Jones and told him Swenson was making an awful fuss and they had better telegraph the relatives. He told Jones exactly how to word the telegrams. Jones wrote the telegrams and took them to the telegraph office. Copies of the messages were identified and received in evidence. The indicated sending time was 2:00 P.M.

The Court now took a hand in Jones's examination. Jones testified that the saturated sponge in the cone did not touch Rice's face, but that the towel "covered the nose, mouth and chin pretty well up on the cheek." Rice wore a mustache and a beard, but no chloroform got on either.

Under Osborne's examination the witness continued. Sometime in August Patrick told Jones he might decide to have Rice's body cremated and gave Jones the name of a crematory, asking him to get a catalogue from them. Jones obtained the catalogue and gave it to Patrick. Afterward, from Patrick's dictation, Jones wrote the "cremation letter." Patrick said that, by immediately cremating the body, they would "destroy everything that would excite suspicion."

Jones described a conversation with Patrick in the Tombs after both had been arrested. House, one of Patrick's lawyers, was present but at a distance so that he could not hear what was said. Patrick said House insisted on knowing whether a murder had been committed—as Patrick's lawyer he must know the truth. Patrick suggested to Jones that he had better tell that there had been a murder but "not under any consideration say that he [Patrick] had been in any way involved." Jones answered that, if he told anything, he would tell the truth just as it happened.

In the Tombs Jones and Patrick discussed a suicide pact,

and Jones said he would kill himself if he had any way of doing it. Patrick said he would, too; he had some oxalic acid in his cell and would take some of it and then cut his throat. Later Patrick gave Jones a small dull penknife. Jones tried to cut his throat with it and probably would have succeeded had not the jail attendants discovered his condition and rushed him to a hospital. Jones exhibited the scars on his neck. They were quite extensive and corroborated this part of his story.

Jones was subjected to a long, bruising, rapid-fire cross-examination. He answered every question put to him without hesitation, and Moore's sharp questioning developed few, if any, contradictions or inconsistencies.

He was closely questioned on the use of the chloroform and the disposition of the cone. He said that when he put it in the stove "it blazed up quickly like a flash." However, there were papers in the stove, and he did not know whether the papers or the towel made the flash; all he could say was that there was a blaze. This became the basis for much of the opposing defense testimony.

Moore also brought out that Jones had made three different statements to the district attorney's representatives—the last one, which corresponded to his testimony on the witness stand, after he had attempted suicide and been removed to the hospital. Since making that statement he had been treated very leniently. From November 15, 1900, to May 8, 1901, he had been under rather easy restraint in the House of Detention and since then had lived at state expense in a private boardinghouse with little or no surveillance.

Jones readily admitted that the first two statements he had made to the district attorney were false. He denied that he had made any deal with the prosecution, but admitted he had testified in a previous preliminary hearing that he "had been promised some immunity."

The State closed its proof by calling a number of witnesses who corroborated some of the more important details of Jones's testimony.

John W. Coleman of Houston, an acquaintance of Patrick in his school days at the University of Texas, testified that Patrick talked to him about the Rice-Holt case and the Rice Institute in August 1900. Patrick said the amount of Rice's worth had been greatly exaggerated and "it would be a cold day before the Institute was built."

Henry Oliver, a former general manager of the Merchants & Planters Oil Company in Texas, in which Rice had a seventy-five-per-cent interest, testified to the complete destruction by fire of the company's refinery on September 16, 1900, and of his correspondence thereafter with Rice.

Joseph Mayer, an office boy in Patrick's office, said he had seen Jones and Dr. Curry in Patrick's office on a number of occasions. Patrick told him never to let anyone into his private office when he was in there talking to Jones. The witness also remembered receiving envelopes addressed to Patrick which had the printed name "W. M. Rice" in the upper left-hand corner. He had never mailed any letters from Patrick to Rice.

After Rice died Patrick rented a safe-deposit box and gave Mayer an authorization to enter it and a package to put into it. He cautioned Mayer at the time not to tell anyone about it—"not even his mother." Mayer visited Patrick in the Tombs after his arrest, and Patrick told him that, if anyone talked to him, the more questions he could answer with "I don't remember" the better it would be for everybody.

Mayer also testified to having seen a bottle of powdered oxalic acid in Patrick's office.

Recalled to the stand for additional testimony, Weatherbee of the Swenson bank told of a conversation he had with Jones in Brooklyn in the early part of 1900. After reminding Weatherbee that Rice had "turned him [Weatherbee] down for a loan," Jones brought up the subject of the 1896 will, to which Weatherbee had been a witness. Jones said that will gave most of Rice's money to the Rice Institute, which was not right, and he had a proposition to make to Weatherbee. Baker, William M. Rice, Jr., and Judge Bartine of Somerville,

New Jersey, were the executors of the 1896 will, and Bartine "had no business in there." Jones would bring to Rice a new will that would give more to Rice's relatives and substitute Weatherbee's name for Bartine's as one of the executors. As payment for himself Jones would be satisfied with whatever part of Weatherbee's commission Weatherbee saw fit to give him.

"Now you get one witness and I'll get another, and the thing is done," said Jones. At times when Rice waked up he was "dopey," and in that condition he would sign anything, Jones explained. When Weatherbee asked where Jones got such an idea Jones replied that he had been "approached by other parties to do the thing—one a Texas lawyer and two others who were New York lawyers." Weatherbee told Jones he would have nothing to do with such a scheme, and later he reported the conversation to Swenson.

William Lafayette Jones, a resident of Houston and a brother of Charles F. Jones, testified that in August, at his brother's request, he sent him by express a boxed package containing a four-ounce bottle of chloroform and in the early part of September sent him another boxed package which contained a two-ounce bottle of chloroform and a one-ounce bottle of laudanum. This was supplemented by three American Express Company employees, who testified from their recollections and records to the delivery of two boxed packages to Charles F. Jones at 500 Madison Avenue, New York. The shipper in each instance was William Lafayette Jones of Houston, Texas, and the dates of delivery corresponded with the approximate dates of shipment given by William Lafayette Jones.

Mrs. Martha E. Thompson of Galveston, who had long been an intimate friend of Rice and his wife, stated that she with a Mrs. Moody, also of Galveston, called at the Rice apartment on September 23 between 7:15 and 7:45 P.M. They rang the doorbell of the Rice apartment for fully twenty minutes. They got no response and left.

John Houlihan, the hallboy in the Berkshire Apartments,

swore he saw Jones come out of the front door at 6:30 P.M. on Sunday, September 23.

Paul Teich, night watchman and elevator operator in the Berkshire Apartments, testified he took Jones up on the elevator shortly after seven o'clock on the evening of September 23 and left him off at the Rice apartment on the fifth floor. Twenty or thirty minutes afterward two ladies called who rang the bell to the Rice apartment a number of times, got no answer and left. He was positive Jones had not gone out after he took him up in the elevator.

A short time later Teich saw Patrick and Dr. Curry come in and he took them up to the fifth floor. Jones opened the door to Rice's apartment and said, "Old Man Rice is dead." Later Patrick came down and told Teich that he had been remembered in Rice's will. Teich had seen Patrick in the building probably six or eight times before the night Rice died.

Five employees of the New York Telephone Company produced and identified records to show numerous telephone calls made on Sunday, September 23, from 500 Madison Avenue to Patrick's home address at 316 West Fifty-eighth Street.

The People rested.

The defense presented its motion to dismiss and to compel the prosecution to elect upon which of the several counts of the indictment it would proceed. Judge Goff listened patiently to the long arguments and overruled both motions.

House made a vigorous opening statement for the defense, in which he promised to produce evidence which would show:

1. That Rice died a natural death. "The best doctors in the country" would testify that the old man died of a condition known as oedema of the lungs, and not from the inhalation of chloroform.

2. That Jones's story from beginning to end was a tissue of falsehoods "made up to satisfy the ends of somebody" and to mitigate his (Jones's) punishment; that it would have been impossible for Jones to chloroform Rice as he said he did;

and that a towel saturated with chloroform would not burn as Jones said it had.

3. That Rice and Patrick had frequently been seen together.

4. That Rice signed the four checks and gave them to Patrick for the purpose of settling the Rice-Holt litigation.

5. That the "cremation letter" was genuine and expressed Rice's wishes.

6. That before his death Rice had told a number of persons that "the Texas people" had got all the money out of him that they were going to get, and that he had given the bulk of his money to a young man in trust for charitable purposes which had been agreed on between them.

The first witness called by the defense was Dr. Walter Curry.

Dr. Curry was sixty-seven years old. He had served as a Confederate army surgeon during the Civil War and estimated that during that four-year conflict he had attended more than 40,000 medical and surgical cases. Since the peace of Appomattox he had practiced in New York City. He was Patrick's physician and, through Patrick's recommendation, had treated Jones during his illness in the spring of 1900. In that connection he had prescribed laxative pills for Jones which contained one fifth of a grain of oxide of mercury. It was, he said, orthodox treatment for Jones's ailment.

The doctor met Rice at the Madison Avenue apartment on March 20, 1900. He took over the treatment of Rice on April 10 at the latter's request and continued to treat him until his death. At the commencement of his attendance he made a thorough examination of Rice and found his heart action weak and slow, his pulse fifty-four. Rice had dropsy from the knees down; his feet were so large that his shoes had to be specially made for him. The dropsical condition continued until his death.

Until September 8 Rice's condition did not get any worse. On that day the doctor called and found him worried and depressed because of news of the Galveston cyclone and flood,

in which he lost considerable money. On September 17 Jones came to the doctor and told him Rice was suffering from a bad case of diarrhea caused by overeating bananas. The doctor made another general examination of Rice. His heart was weak, his pulse sixty. He had no fever. Dr. Curry prescribed arrowroot to check the diarrhea.

The doctor saw Rice twice on September 22. On the first occasion there were two men in the room and, in trying to introduce them, Rice appeared to have difficulty in remembering their names. On the second visit the doctor examined the patient carefully. Rice was weak, and "his circulation was not so good." The doctor diagnosed the condition as "mental" and told him not to worry but to go to bed and get some sleep. About the time Dr. Curry finished his examination Mrs. Carpenter came in. She stayed for some time, and the doctor left shortly after she did. Privately the doctor cautioned Jones to keep Rice perfectly quiet; he thought Rice "would be all right, but if the worst should happen not to be surprised."

On Sunday morning about eleven Curry saw Rice again. The old man complained he was not feeling very well. His pulse was the same as it had been the day before, but his breathing showed that something was troubling him. The doctor re-examined the lungs, but could find nothing wrong with them.

In response to an emergency call the doctor returned to the apartment at 8:00 P.M. Rice was dead. The doctor examined the body. It was still warm, but was growing cold. The pupils of the eyes were normal. The features were calm and placid. There was nothing to indicate that the old man had gone through a struggle before death.

The doctor testified to having had an extensive experience in the use of chloroform. He said its presence was readily detectable from the smell, which would remain in a room for four or five hours after chloroform was used. There was no evidence of chloroform in the atmosphere of Rice's room and none on Rice's body. Had chloroform been administered to

Rice a half to three quarters of an hour before he arrived, the doctor would certainly have detected it. He denied ever having had a conversation with Jones in which they discussed the properties and effects of chloroform.

Curry identified the death certificate he had made out and signed—"cause of death: old age and weak heart; immediate causes: indigestion followed by collacratal diarrhea with mental worry."

The doctor swore that on one of his visits to Rice, about the first of September, Jones came into the bedroom and said, "Mr. Rice, Mr. Meyers and a young man from Mr. Patrick's office are here to see you," and Rice said he would see them. And he described a conversation with Patrick about the twelfth of September in which Patrick inquired how Rice was getting along; he told Patrick that Rice was doing pretty well but was an old man with a weak heart and likely to die any time.

Osborne's cross-examination of Dr. Curry elicited a number of important facts which had not been brought out on the direct examination.

The doctor said Patrick asked him on Saturday morning if he thought Rice would be able to go downtown Monday morning. Curry replied that he did not think so. Patrick then asked if the old man might be able to get down during the coming week, and the doctor said this was likely.

Closely questioned as to Rice's condition on Sunday, Curry admitted that his patient had no oedema in the lungs, no cough, no watery or bloodstained expectoration, no pulmonary congestion. There was no coldness in the extremities. The urine was normal, the liver and intestines were functioning and the skin was smooth and soft.

The doctor also admitted that, before introducing him to Rice, Jones said, "Don't mention Patrick's name before Rice." The doctor said he never did. And not until after Rice's death did he know that Patrick claimed to be Rice's lawyer or that Patrick was named in Rice's will.

At no time, Dr. Curry stated, had he prescribed mercury

for Rice. The effect of mercury would be to cause a diarrhea and weaken the resistance of a man in Rice's condition. Curry would not have administered chloroform to Rice in the condition he was in. Chloroform would kill more quickly where the heart was weak. To a hypothetical question which recited Jones's testimony about how the chloroform was administered to Rice, he answered that such an administration might have killed Rice in four or five minutes or death might not have resulted for half an hour.

Dr. Curry was followed on the witness stand by seven medical experts. All were men of impressive qualifications. Some were general practitioners, some were lung specialists and some professed a special and extensive knowledge of the properties and effects of chloroform. There was inevitably a great deal of repetition in their testimony. By direct examinations, which evidenced the careful study defense counsel had made of this vital part of their case, it was developed that:

Chloroform has a distinctive, readily detectable odor which lingers in a room for hours after chloroform has been used. It has a peculiar affinity for hair or whiskers, which would retain the odor much longer than the bare skin. The odor will remain longer in a closed room than in one through which there is a current of fresh air. Chloroform is not combustible, and a towel saturated with chloroform would not burn until the chloroform had evaporated. In liquid form chloroform is an irritant. If poured on the skin, it will burn it. Some of the experts said that the vapor of chloroform inhaled into the lungs was not an irritant; others were of the opinion it was "slightly irritant"; still others said there was a difference of opinion on the question among the "authorities."

All the experts agreed that ordinarily the first reaction of a patient to whom chloroform has been administered by inhalation of the vapor is excitement and struggle; frequently a patient has to be held while chloroform is being administered as an anesthetic. The effect of an inhalation of chloroform vapor is to congest not only the lungs, but the other organs of the body—the brain, the liver, the stomach, the

gastrointestinal tract, the glands, the kidneys and the right side of the heart.

To a series of hypothetical questions the doctors answered that it would have been impossible to administer chloroform to a person in the manner described by Jones and not leave an odor detectable after a half to three quarters of an hour. If chloroform was administered in such a manner to a sleeping patient, he would awaken and struggle and throw off the cone.

To a question which purported to summarize Dr. Curry's testimony and the findings on the autopsy, as testified to by the People's witnesses, all the defense experts gave it as their opinion that Rice had not died as the result of chloroform poisoning. There were numerous diseases and conditions which would cause a congestion of the lungs—even one coextensive with the lungs. Among these were pneumonia, tuberculosis, pulmonary apoplexy, chronic Bright's disease or a general septicemia.

One of the experts was a specialist in the properties and effects of mercury. Mercury, he said, was commonly given in medicinal doses for a variety of human ailments. The presence of minute particles of mercury in the organs after death was not significant. Taken in too large doses, mercury might cause death. The symptoms of such an overdose were burning pain, vomiting mucus mixed with blood, diarrhea, rapid pulse and, finally, convulsions.

In another long hypothetical question—it purported to summarize Dr. Curry's testimony and the autopsy findings, but laid special emphasis on Rice's weakened state and the condition of his heart, kidneys, the dropsical condition of his lower limbs and the presence of a "patch of consolidated lung tissue in the lower lobe of the right lung about the size of a twenty-five-cent piece"—the experts were asked their opinions as to the cause of death. Their answers were various: "congestion of the lungs and kidney disease," "pneumonia and a congestion or oedema of the lungs," "oedema of the lungs or dropsy the immediate cause; nephritis the remote cause"

and "old age, oedema of the lungs, crippled kidneys, narrowing orifices of the heart, and an entirely worn out equipment."

Osborne's cross-examinations of the defense medical experts were classics—worthy to rank with Sir Edward Clarke's famous cross-examinations of the greatest medical specialists in England in his successful defense of Adelaide Bartlett. Space limitations unfortunately preclude anything more than a summary.

The prosecutor developed that, while chloroform was not in itself combustible, it evaporated very quickly and a cloth saturated with it might burn readily after a half or three quarters of an hour. He made some of the doctors admit that the use of chloroform in an operating room, where a sponge saturated with chloroform was waved for sometimes as much as twenty minutes in front of a patient's nose, was not comparable to the application of the poison in the manner described by Jones. In the former situation the air would be impregnated with the odor. This would not be true if a cloth cone with a saturated sponge inside it were pressed over the face of a sleeping person. One expert admitted that two ounces of chloroform used as Jones used it might wholly evaporate in an hour and leave no odor.

The examiner also compelled the doctors to admit that they had known of cases where chloroform had been administered to sleeping patients and the patients had not struggled but had gone into a deeper sleep. To questions which quoted medical authorities to the effect that patients might or might not struggle while undergoing an administration of chloroform and that death might or might not be instantaneous, the harassed experts answered either that they were unfamiliar with the authorities or disagreed with them.

Practically all the experts admitted that a congestion "coextensive with the lungs" such as was found on the autopsy could have been produced by an irritant gas. From two of them Osborne drew admissions that an inhalation of chloroform vapor might congest the lungs and not affect the brain.

To several of the witnesses the cross-examiner put a sharply worded hypothetical question which fairly recited all the evidence, but stressed the condition of Rice at 11:00 Sunday morning—the fact that the old man had had a good night's rest, that the condition of his heart and pulse were the same as they had been for weeks, that there was no evidence of any oedema in the lungs, no cough, expectoration or other symptom of pneumonia, and that there was a complete absence of fever. He concluded with the query whether "there must not have been some intervening cause between 11:00 in the morning and 8:00 at night to have caused Rice's death." The experts squirmed and hedged. An answer finally wrested out of one of them was: *"An entirely new cause might have intervened between 11:00 a.m. and 8:00 p.m."*

The persistent cross-examiner followed this with another question: If on post-mortem there was found to be a congestion coextensive with the lungs, could not the intervening cause have been the inhalation of chloroform? The witness answered that the old man could have been killed by chloroform, but in his opinion—based on the small patch of congested tissue in the lower lobe of the right lung—chloroform had not caused the death. Still the examiner was not satisfied and, in reply to a slightly altered question, finally got the answer he was looking for: "Unquestionably the death could have been produced by chloroform."

All the doctors who suggested pneumonia as the cause of death were forced to admit that the normal course of that disease from onset to death was three days, and you could hardly expect it to develop and end fatally in nine hours.

During the examination of the experts there was a dramatic interlude. Moore, for the defense, proposed that an experiment be made in the presence of representatives of both sides to determine the combustibility of a device such as that Jones said he used to kill Rice. Osborne immediately gave consent. One of the defense experts described the experiment and its results. Two ounces of chloroform were poured on a small, ordinary sponge; the sponge was inserted in the small end of

a cone made from a linen towel; the cone with its contents was allowed to remain intact for thirty minutes; it was then placed in a brazier, and a match was applied to it in two places. It burned for nine minutes, smoldered for fifty-one minutes and then went out. In a repetition of the experiment the cone burned for six and a half minutes, smoldered for fifty-four minutes and then went out. In both tests the towel burned slowly. Before the burning, the cone with the sponge saturated with chloroform inside was left in a closed room. When the witness returned after thirty minutes he thought he detected the odor of chloroform but would not swear to it.

The medical testimony of the defense was followed by the testimony of a number of lay witnesses. *Patrick himself did not take the stand.*

Charles T. Adams, an attorney in the employ of the Manhattan Railway, stated that he had known Rice for a long time before his death and had drawn a codicil to Rice's 1896 will. On one occasion he discussed cremation with Rice. Cross-examination of Adams proved a boomerang to the defense which had called him. He gave it as his opinion that the signatures "W. M. Rice" on the 1900 will were not Rice's.

Maria Scott, the Negress who did the weekly cleaning at the Rice apartment, said she had seen Patrick in the rooms at least twice before Rice's death. When she saw Mr. Rice on Saturday he appeared very weak. Probably the most helpful testimony she gave for the defense was that on Saturday she had put some "sweepings" in the kitchen range, and when she came to the apartment on the following Monday after Rice's death she found them in the stove exactly as she had left them.

Mrs. Isabelle Carpenter, Rice's old neighbor from Dunellen, testified she made frequent calls on the old gentleman and brought him delicacies. On one of those occasions she found Rice and Patrick together, talking. She described a visit to Mr. Rice shortly after the Galveston flood. He was very depressed and cried and told her he had lost over a million dollars.

The day before Mr. Rice died she called on him and stayed until five o'clock in the afternoon. She tried to speak to him, but he could not talk, and just before she left he dropped off to sleep. Mrs. Carpenter's testimony was weakened by a cross-examination in which she became badly confused and finally declined to answer further questions.

Christian Shefflin, a Dunellen clothing manufacturer, said he knew Rice very well and frequently visited him at the Madison Avenue apartment. On one of these occasions Rice mentioned the name of Patrick to him.

Morris Meyers and David L. Short, the former law office associates of Patrick who had figured prominently in the People's testimony, took the stand for the defendant.

Meyers was twenty-six years old and had worked for Patrick since 1896. He testified he was in the Rice apartment with Short on June 30, 1900. Rice "said something about a document and signed his name on each of a number of pages" and then asked Meyers to witness his signature, which he did. He identified his signature on the 1900 will. He identified also his signature on the general assignment, the assignment of the contents of the safe-deposit box at the Fifth Avenue Trust Company and the revocation of Baker's authority to enter that box and swore that at Rice's request he and Short had signed all the documents as witnesses to Rice's signatures.

On cross-examination Meyers stated that Jones introduced him to Rice as a man from Patrick's office and that afterward he talked with Rice about Patrick a number of times. He had never seen Rice and Patrick together, however.

Meyers testified that he had done considerable typewriting for Patrick in connection with the 1900 will, working from penciled notes supplied by Patrick. He never saw any notes in Rice's handwriting. In Patrick's office he had seen a number of mailed envelopes with Rice's return address in the upper left-hand corner. After Patrick was arrested Meyers took charge of Patrick's affairs and found "a whole lot of papers from Rice to Patrick" which he turned over to Mr. House (one of Patrick's lawyers).

Short followed Meyers on the stand and said he first met Rice in the Madison Avenue apartment in May 1900. After that he saw him probably fifteen times—always in the company of Meyers. He described a visit to Rice's apartment on June 30, corroborating every detail of Meyers' testimony as to the signing and witnessing of the will. And he identified his signatures on the other documents which Meyers said they had witnessed.

On cross-examination Short said he had seen Jones at Patrick's office on at least two occasions but had never seen Rice and Patrick together.

On Monday morning, Short testified, Patrick gave him the $25,000 check on Swenson's bank and asked him to go to the bank and get it certified. He related his presentation of the check, and his version did not vary substantially from that given by People's Witness Wallace. Short maintained that he did not know when he presented the check that Rice was dead.

The final witnesses called for the defense were two alleged handwriting experts. One failed to qualify, and the testimony of the other was stricken by the court as "mere supposition."

The defense rested.

In rebuttal the People called four eminent physicians who were specialists in the properties, uses and effects of chloroform. To each of them Osborne put a carefully prepared hypothetical question in which he included all of Dr. Curry's findings in his examinations of Rice made before death, and Jones's testimony as to the administration of the chloroform, and asked what the effect of that administration would have been on a man in the condition of health described. The uniform answer was: death.

All the People's experts were emphatic in their opinion that, considering the way the chloroform had been administered, the odor would not have been detectable after an hour; by that time all the chloroform would have evaporated, and the question of burning would depend solely on the relation of the fire to the towel—"just as though there had never been any chloroform on it." Moore's vigorous cross-examination

failed to weaken or qualify this last contribution to the thousands of pages of contradictory medical testimony that had been poured into the ears of a patient jury.

Dr. John Downs McAllister, who had been present at the autopsy, testified that he particularly examined the lungs. He found no evidence of dropsy, and, if dropsy had existed before death, evidence of it would surely have been present after death.

The People again rested. There was a recess of two days, and on Monday, March 24, 1902, the final arguments were begun.

Moore summed up for the defense. In the face of a strong case he put up a bold front. He stressed the legal safeguards thrown around persons accused of crime—the presumption of innocence and required proof of guilt beyond a reasonable doubt. Patrick, he said, had no motive to kill Rice. The $250,000 in checks was to settle the Rice-Holt litigation. The money he took under the 1900 will was left to him in trust.

The Rice Institute, said Moore, was a myth. Rice had never really given it anything. "God help the students who had to depend on it for an education."

Jones was an "incredible liar." That was established by his inconsistent statements and the utter improbability of his final story. His attempt to cut his throat had been a fake. He was testifying now in a frightened effort to escape the consequences of his acts and gain immunity from prosecution. The deal had been made—his practical release since his confession established that fact. The chloroform from Texas was another fake. Jones's brother was a liar; there was no evidence except his own to show what was in the express packages.

Moore rang the changes on Jones's testimony that the cone "flashed up" when he put it in the stove. He argued the testimony of the experiment "conducted by mutual consent" to prove that here again Jones had lied. If the jury needed further proof, there was the testimony of Maria Scott that the condition of the stove on Monday morning was the same as it had been when she left it the Saturday before.

The People's handwriting experts were "opinionated theorists." The testimony of Short and Meyers was better than that of all the experts.

The defense counsel argued the medical testimony. There was no question here, he said, of reasonable doubt. The evidence was conclusive that Rice had died a natural death.

Osborne, making the closing plea for the People, carefully reviewed the State's evidence. The State had done as it had promised: it had made a case without Jones. Jones's story simply filled in the sordid and gruesome details.

He charged Meyers and Short with perjury so brazen and obvious that even the attorneys for the defense recognized it. Weatherbee's testimony alone, which had not been denied, proved them liars.

Osborne traced Rice's career from birth to 1900, when he was an old man—an old man but a sane one, competent and strong-willed. The Rice Institute had become the dream of his closing years. When it was revealed that his wife's lawyer had drawn a secret will pretending to dispose of half of Rice's property he felt that he and the Institute had been defrauded. He was bitter about it and refused to pay a cent to settle the litigation. This is what he said, and this is what the jury, with what it now knew of Rice, would have expected him to say.

Rice knew Patrick was working for Holt—Holt, Rice's enemy—and doing the dirty work Holt would not do. Patrick was afraid to face Rice. He never did face him. That is why he called in Whittlesley. The weak and uncertain and discredited testimony that Rice and Patrick had been seen together was a tissue of falsehood.

Patrick had never been Rice's lawyer. The will, the assignments, the checks, the cremation letter—all were forgeries. Patrick and Meyers had worked on the will for weeks, but no one had ever seen a scrap of paper from Rice suggesting what should go into the will. It was all the work of Patrick and Meyers—Patrick the director, Meyers the tool.

Meyers had told of seeing letters from Rice to Patrick. He said he turned them over to House, Patrick's lawyer. Where

were they? Why were they not produced? The answer was obvious: If such letters ever existed, they were forgeries, and the defense did not dare produce them.

Osborne reviewed and analyzed the testimony of the fifteen medical experts. There was no question, he said, but that Rice had been murdered, and murdered by an administration of chloroform. The murder had become a necessity if Patrick's devilish plot was to succeed. Rice had to be put out of the way before Monday morning, September 24. Rice had agreed to put up $250,000 to rebuild the oil refinery. The first draft for $25,000 had been presented; others were soon to follow. Rice had $250,000 in the New York banks. It was part of Patrick's over-all scheme to get that money. Had Rice been able to get out and go to the bank on Monday morning, that $250,000 would have been lost to Patrick. And so they killed Rice—Patrick the plotter, and Jones the executioner!

It was a powerful argument—the climax of a well-prepared and skillfully presented case.

Judge Goff's charge gave Patrick everything he was entitled to. It emphasized the constitutional safeguards and the burden on the People to overcome the presumption of innocence and prove beyond a reasonable doubt Patrick's guilt of the murder charged. It was an accurate and impartial statement of the law and the issues, delivered with a calmness and detachment which provoked the press comment that no one hearing it could have guessed whether the learned judge believed Patrick innocent or guilty.

On the morning of March 26, 1902, the case went to the jurors. After a relatively short deliberation they returned with their verdict: guilty of first-degree murder. Under New York law this made a sentence of death mandatory.

Patrick's attorneys filed the customary motions for a new trial and in arrest of judgment. Both were overruled, and on April 7, 1902, Patrick was sentenced to die in the electric chair on a day within the week commencing May 5, 1902.

But Patrick's fight to escape the executioner had just begun. There was a long hearing before Judge Goff on a supple-

mental motion for a new trial. Judge Goff listened patiently for days to alleged newly discovered evidence and arguments. The motion was overruled.

Then followed an appeal to the court of appeals. Patrick was represented in the high court by David B. Hill, one of the great lawyers of New York, a former governor and United States Senator and, incidentally, the Democratic political boss of "upstate New York." The People were represented by District Attorney William Travers Jerome. Three years went by. Patrick, meanwhile, was confined in the New York penitentiary at Sing Sing.

On June 9, 1905, the high court handed down its decision.[6] By a vote of four to three it affirmed the judgment of conviction. Patrick was resentenced to die during the week of August 7. A petition for rehearing followed, and the execution was again stayed. The petition was an elaborate one, based largely on a claim of newly discovered evidence. It was argued at length before the seven judges and overruled on November 28. The contemporaneous order of the court resentenced Patrick to die in the week of January 22, 1906.

This last setback was followed by an unprecedented proceeding: a bill was introduced in the New York legislature to grant Patrick a new trial. It passed both houses of the legislature, but was vetoed by the governor.

But the end was not yet. A petition to the Supreme Court of the United States to review the case again postponed execution of sentence. On December 13, 1906, the highest court in the land denied the petition.[7]

Meanwhile, Patrick's influential friends, aided by the seemingly inexhaustible purse of Patrick's relatives, had petitioned Governor Higgins for a pardon. The pardon was refused, but Patrick's sentence was commuted to life imprisonment.

From Sing Sing Patrick issued this announcement: "I am either innocent or guilty. I refuse to accept Governor Higgins' commutation of my sentence. I believe that to a certain

[6] 182 N. Y. 131, 74 N. E. 843.
[7] 203 U. S. 602.

extent its acceptance by me would be an admission of guilt. I propose to continue my fight for freedom."

Aftermath

Despite this show of bravado, Patrick settled down to the prison routine of making window sash. In the six years that followed he occasionally made newspaper headlines with the announcement of some new and ingenious appeal. One of these was so fantastic it deserves comment. He claimed that the New York court of appeals, in affirming his conviction, had "without legal warrant or jurisdiction" ordered a stay of execution. If the stay was void, argued Patrick, it must be presumed that the execution had been carried out; therefore he was "legally dead" and, as a nonexistent person, was illegally confined to Sing Sing!

Meanwhile, the pressure of Patrick's friends on successive governors for a pardon for Patrick was kept up. The persistent and costly effort finally succeeded. On November 28, 1912—and just before the expiration of his term—Governor John Dix granted Patrick an unconditional pardon. The governor assigned a variety of reasons: "There had always been an air of mystery about the case," "the hostile atmosphere which surrounded the defendant when he was tried precluded a fair trial," "in 1910 the Medico-Legal Society of New York had published a brochure of their 'researches' and had concluded that the condition of Rice's lungs as found on post-mortem could not have been caused by chloroform," and, finally, "Patrick's release had been recommended by the State Superintendent of Prisons."

There was a storm of protest and more than vague hints of corruption which had reached into high places. Patrick, however, was turned out of prison, a free man. What happened to him afterward is uncertain. By some accounts he went to St. Louis, by others to Oklahoma and by still others to his native Texas. There are unverifiable stories that in some of these places he got into still further difficulties.

Shortly after Patrick's conviction Jones was given his full freedom. It was reported that he returned to Texas. What actually became of him is pure conjecture. He seems—to borrow again from Carlyle's picturesque language—to have "dived beyond soundings."

Time has given the lie to Attorney Moore's noisy argument that the Rice Institute was a myth and that it would be a long day before any student enjoyed there the benefit of education in the arts or sciences. In 1910 the protracted litigation which followed Rice's death was terminated and the will of 1896 was declared to be the last will and testament of William Marsh Rice. Under that will the Rice Institute came into the possession of an endowment of about ten million dollars, which, says the current catalogue of the institution, has been "since trebled by careful management and additional gifts."

Rice's dream has become a reality. In a spacious campus three miles from the center of Houston stands a group of some of the finest specimens of Romanesque architecture to be found anywhere in the world—commodious buildings containing classrooms, laboratories and libraries for the teaching of philosophy, the sciences, engineering and architecture, history, mathematics, modern languages and English literature. Fifteen hundred selected students, who are charged no tuition, annually pass through its portals with earned degrees of Bachelor of Arts, Bachelor of Science, Master of Arts and Doctor of Philosophy.

The memory of William Marsh Rice lives as he wanted it to live—in the gratitude of thousands living and yet to be born who have been or will be the beneficiaries of his vision and bounty. His ashes, after several removals, rest where they rightfully belong: in the base of a heroic-sized bronze statue erected to his memory at the center of the Academic Court of the Rice Institute, overlooking the vast panorama he did so much to create.

III

The Trial of

FRANCES S. HALL

and

HER TWO BROTHERS

for the Murder of

ELEANOR MILLS

(1926)

3

The Hall-Mills Case

THE HALL-MILLS case is significant as an illustration—mercifully, by no means usual—of a flagrant maladministration of criminal justice. Notwithstanding the boldness of the crime, the telltale marks left by the murderers to suggest its motives, two separate investigations by both local and state officials—one in 1922, another in 1926—and the expenditure by Somerset County, New Jersey, of more than $25,000 for the services of "special" prosecutors and investigators, the ultimate "case for the prosecution" was, from the legal point of view, neither persuasive nor well presented. The defendants, on the other hand, had the means to command some of the best legal talent in America, and the "Million Dollar Defense," as it came to be called, turned in a masterly performance. Local sentiment—partly natural disposition and partly induced by cleverly manipulated propaganda—strongly favored the highly placed defendants. While this combination of circumstances made acquittal inevitable, the record will pose many unanswered and perhaps unanswerable questions for an objective reader. More than a hundred special newspaper and magazine correspondents "covered" the trial, which is said to have furnished more headlines and claimed more space than any previous trial in American history.

THE FICTIONAL murder mystery, the typical "whodunit," ordinarily has for its lure a bizarre or gruesome crime involving persons of importance; clues, more or less obscure; a half-dozen equally likely suspects; and a superlative sleuth who, through means devious but certain, ultimately brings the criminal to stern and unflinching justice. The Hall-Mills case, a true crime story, had all these

ingredients save one: there was no superlative sleuth to ferret out the criminal, so no one paid the penalty for the crime. Except as a reader of the record may reach a conclusion which satisfies him, the Hall-Mills case remains to this day an unsolved mystery.

New Brunswick, New Jersey, in 1922 was a self-sufficient industrial and residential community of some 30,000 people. As the county seat of Middlesex County and the largest municipality within a radius of fifteen miles it was the natural shopping and business center of the broad and prosperous agricultural area which surrounded it. It was the site of old-established Rutgers College and the principal theological seminary of the Dutch Reformed Church. It could boast of advanced public schools, extensive libraries, fine churches and splendid hospitals, numerous industrial plants, strong and well-run banks, uniformed and plain-clothes police force and an up-to-date mechanized fire department.

In 1922 the ducal family in this thriving principality was the Stevens clan. Mrs. Frances Noel Stevens Hall, her husband the Reverend Edward Wheeler Hall, and her bachelor brother William occupied a palatial residence in the most select block of Nichol Avenue in the heart of the city's most exclusive residential district. Mrs. Hall was richly endowed with this world's goods, and a small army of servitors cared for the household and the broad, landscaped grounds which surrounded her stately dwelling.

The Stevenses (Frances and her brothers William and Henry) were allied by blood or marriage with the rich and influential Johnson and Carpender families. Robert and James Johnson were the proprietors of New Brunswick's largest industrial enterprise—the internationally known firm of Johnson & Johnson, manufacturers of surgical supplies. Both Johnson families were active in the civic and social life of the community. Henry de la Bruyere Carpender, scion of one of the oldest families in New Jersey and a prominent member of the New York Stock Exchange, and his brother, Edward R. Carpender, housed their highly regarded families

in spacious residences in the same block with the Stevens mansion.

Henry Stevens, whose principal occupation appears to have been taking care of his plentiful supply of money, maintained two esablishments: a seaside home on Barnegat Bay at Lavallette, New Jersey, and a well-appointed apartment in downtown New York. He was a well-known sportsman—an expert fly caster and trap shot.

William Stevens, or "Willie" as he was generally called by the townspeople, followed no gainful occupation. While estimates of his mental capacity were conflicting, it was conceded by his family that he "needed some supervision." His main concern seems to have been with the local fire department. With his oversized fire helmet he was a familiar figure at every blaze.

Edward Wheeler Hall, splendidly educated and ordained as an Episcopal minister, received a "call" to become the rector of the Church of St. John the Evangelist, New Brunswick's most fashionable place of worship, in 1909. He was young (twenty-seven), handsome and ingratiating. His popularity was immediate.

Frances Stevens was one of his richest and most influential parishioners. Although seven years Hall's senior and well past the bloom of youth, Miss Stevens was not unattractive. She was well-poised, dressed tastefully and evidenced clearly the careful education she had received and the atmosphere of culture in which she had been reared.

On July 20, 1911, Miss Stevens and the Reverend Mr. Hall were united in the bonds of holy matrimony in one of the most fashionable weddings New Brunswick had ever seen.

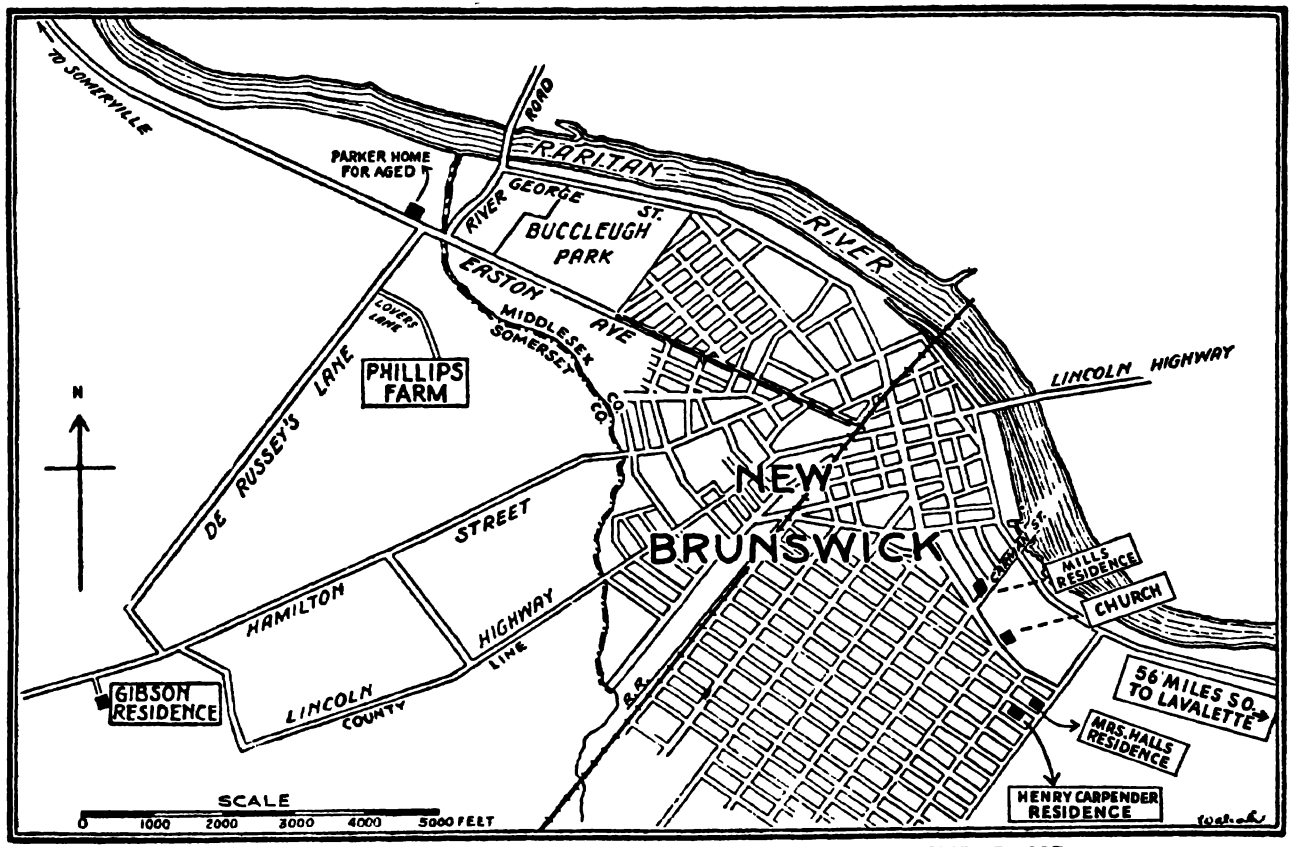
Just when the "affair" between Hall and Mrs. Eleanor Mills—the details of which were later to supply the press with such delectable morsels—became generally known is not clear. Probably it was at least a year and a half before the tragedy of September 1922.

Mrs. Mills in 1922 was thirty-four years of age—blond, petite, pretty and vivacious. She had what was described as

"a fine soprano voice" and was a soloist in St. John's choir. She was married and had two children. Her husband, James Mills. was a shoe cutter by trade but for some time had been employed as a janitor at one of the public schools and as sexton of St. John's church. He was by all accounts a dull-witted, uneducated and spiritless man, his wife's senior by eleven years. The Millses lived in a two-family house at 49 Carman street, pictured by one of the New York newspapers as "a small, dingy, four-room apartment in a ramshackle building not far from the church."

New Brunswick is picturesquely situated on the banks of the Raritan River. In 1922, to the north of the city and beyond the then built-up residence section, a public recreation center—Buccleuch Park—stretched west from the river to Easton Avenue. West of the park was open country, most of it untilled. Connecting with Easton Avenue and running southwest was a public road known as De Russey's Lane. At its southwest terminus De Russey's Lane connected with Hamilton Street, which ran generally east-west through New Brunswick and terminated at the river. About a quarter-mile west of the junction of Easton Avenue and De Russey's Lane a little, meandering, dirt farm road ran southeast into the open fields. Before the fall of 1922 this brush-lined and ill-defined lane was so unimportant as to be nameless. Tragedy and publicity were to make it notorious as "Lovers' Lane." Following this lane to the southeast for 500 or 600 feet, one discovered a small, untended crab-apple orchard. While this was part of the so-called "Phillips Farm," it was a thousand feet or more from the nearest human habitation.

On Saturday morning, September 16, 1922, a young man and woman—Raymond Schneider and Pearl Bahmer, who said they had gone to the crab-apple orchard to look for mushrooms—came upon a bloodcurdling sight. Beneath one of the crab-apple trees lay the bloodstained dead bodies of a man and a woman. They lay face up and side by side. The man's right arm was at right angles to his body, and the woman's head rested on it. Their clothing was neatly arranged. A



THE SCENE OF THE HALL-MILLS MURDER AND ENVIRONS.

Panama hat had been carefully placed over the man's face. (When the hat later was removed and the man's body raised, his eyeglasses were found evenly adjusted to the bridge of his nose. His coat was completely buttoned up in front, but the back of the garment had been badly ripped and torn.) A brown neck scarf covered the face and head of the dead woman. There was a litter of cards and papers scattered on and about the bodies.

Schneider and the girl, according to their first stories, lost no time in running to the roadway and to the nearest habitation, where they reported their gruesome discovery.

The Somerset County police were telephoned and responded promptly. The spot where the bodies lay was in Somerset County, some 350 feet west of the boundary line between Middlesex and Somerset counties, and the officers at the direction of the Somerset County prosecutor took the remains of the dead man and woman to Somerville, the county seat of Somerset County. There the bodies were identified as those of the Reverend Edward Wheeler Hall and Mrs. Eleanor Mills, and they were removed to New Brunswick.

The police made a superficial examination of the place where the bodies were found. They discovered a cartridge shell apparently recently fired from a thirty-two-caliber revolver. Among the scattered papers were a number of Dr. Hall's printed visiting cards. One of these stood up in a tuft of grass at the foot of Dr. Hall's body. There were also ten unsigned, penciled notes in a woman's handwriting. No revolver or other weapon was found.

Although there was no doubt that the couple had been murdered, neither autopsy nor coroner's inquest was held. It was given out that the couple when found had apparently been dead for about thirty-six hours; that Mrs. Mills had been killed by *a* bullet which had entered her forehead above the right eye and exited behind the right ear; and that Dr. Hall had died as the result of *two* bullet wounds in the *back* of the head.

Dr. Hall's funeral and burial took place on Monday, September 18. Mrs. Mills was buried the next day. The Hall funeral was from the Church of St. John, where he had served as rector for twelve years. The deceased was laid out in his clerical vestments. The service was largely attended. Expensive floral pieces banked the altar and four walls of the church. Mrs. Hall, her brothers and her kinsmen, the Carpenders and the Johnsons, sat on the mourners' benches. There was soft music. The beautiful Episcopal service for the dead was intoned with all solemnity.

In striking contrast, Mrs. Mills's funeral service was conducted in the undertaker's dingy and none too spacious back room. Fourteen or fifteen people (most of them—other than the husband, the two children and the two sisters of the deceased—morbid curiosity seekers) were in attendance. There were few flowers, the most conspicuous piece being a wreath from Mrs. Hall. A short prayer was given by a minister brought over from Trenton. There was no music, and after the brief service Mrs. Mills's body was consigned to what was to prove anything but a restful grave.

A prompt and efficient official investigation of the murders was hampered by a rather stupid controversy between the prosecutor of the pleas for Somerset County, Azariah Beekman, and the prosecutor of the pleas for Middlesex County, Joseph E. Stricker. Although the bodies had been found well within the boundaries of Somerset County, the Somerset authorities advanced the theory that the couple actually had been killed in Middlesex County and carried by their murderers into Somerset County. This they deduced from the fact that the victims were residents of New Brunswick, from the carefully "laid out" positions and conditions of the bodies and from the presence at the place where the bodies were found of an iron bar, presumably a footrest taken from an automobile. If this theory was tenable, the discovery and apprehension of the murderers and their prosecution was the responsibility of the Middlesex County police and the Middlesex prosecutor. The Middlesex authorities contended to

the contrary: in the absence of definite proof that the murders had been committed in Middlesex County, the discovery of the bodies in Somerset County made it a Somerset County case and placed on that county the responsibility to find and prosecute the guilty ones. This controversy persisted throughout the investigation.

The inevitable result of this divided effort was duplication and confusion and the omission of many of the usual police procedures followed as a matter of routine in police investigations. In a halfhearted effort both prosecutors summoned suspects and other persons to their offices for questioning.[1]

Mr. Mills and Mrs. Hall were naturally among the first to be questioned. James Mills's story, which later was to be supplemented by additional and significant details, was that his wife left their home on Thursday evening, September 15, at about 7:30. He asked her where she was going, and she answered rather saucily, "Why don't you follow me and find out?" He made no effort to follow her, but waited up for her until midnight and then went to bed. He awakened at 2:00 A.M., found his wife had not returned, aroused the children and went to the church to see if she might have met with some kind of accident there. The church was dark. He discovered no trace of his wife, so he returned home after an absence of half an hour and again went to bed. The next morning about 9:00 he saw Mrs. Hall at the church, and she said her husband had not been home since early Thursday evening. Mills then told her about the absence of his wife.

Shown the penciled notes found near the bodies, Mills identified the almost indecipherable handwriting as that of his wife. The notes breathed what Prosecutor Beekman called "a fervor of religious ecstasy," but their references to "physical inspiration," the inadequacy of her "poor body" in comparison with the "shapely bodies of other girls," and pledges of her "body and soul" to the "eternal love" of her "noble man" left little room for doubt that the relationship

[1] In the subsequent recital no attempt will be made to separate these investigations and examinations.

between the minister and the choir singer was something besides or other than platonic communion or religious ecstasy.

Mrs. Hall's first story, a meagerly lined sketch which underwent considerable expansion with the passage of time and the discovery of new evidence, was that her husband had left the Nichol Avenue home about 7:30 Thursday evening, saying he had some church business to attend to. She spent a sleepless night when her husband failed to return, and on Friday morning she telephoned the New Brunswick police to inquire if any casualties had been reported. They gave her a negative answer.

A private watchman in the Nichol Avenue neighborhood reported to the police that at about 3:00 Friday morning, September 15, while making his rounds, he saw a woman in a gray coat enter the side door of the Hall mansion. He did not identify her and could not say who she was. On further questioning Mrs. Hall admitted she was the woman the watchman had seen. Unable to sleep because of her husband's continued absence, at 2:30 she got up and dressed. She awakened her brother William, and together they went to the church to see if Dr. Hall was there. They found the church dark. Then, thinking that "someone might have been taken ill and Dr. Hall had gone to their assistance," she and her brother went to the Mills home. That was also dark. She made no effort to arouse the Mills household, but returned to her home. The next morning she saw Mills, who said he had not seen Dr. Hall the night before and that his wife also had been away all night. She saw Mills later in the day—at noon and in the evening—and inquired if he had heard anything about his wife. He told her he had heard nothing.

Willie Stevens was interviewed. He refused at first to answer whether in the early hours of Friday he had gone with Mrs. Hall to the church and to the Mills home looking for Dr. Hall, but later he talked freely and corroborated his sister's story.

The police investigation produced some positive and some

negative results. Two more thirty-two-cabiber pistol shells were discovered near the crab-apple tree where the bodies had been found. William Stevens was found to have a thirty-two-caliber revolver with the firing pin on it filed down so that it was useless.

It was no secret that Henry Stevens was a crack shotgun marksman. Questioned at his home in Lavallette,[2] he said he was fishing in the surf for bluefish on the night of the murders and could substantiate that fact by the testimony of an army of witnesses.

The Mills house was searched for a revolver. None was found.

On September 25 Raymond Schneider and Pearl Bahmer, the couple who had reported the finding of the bodies, were arrested and detained for questioning. Both bore unsavory reputations. Schneider, it appeared, had been a more or less worthless and idle roustabout, and fifteen-year-old Pearl Bahmer on at least one occasion had been haled into court as an incorrigible. Schneider, who had been married less than two months before and had left his wife, was apparently only one of several men who were pursuing the Bahmer girl. The net result of fourteen hours of grilling of these two was Schneider's admission that he had been in the neighborhood of the murder scene on Thursday night but had neither seen nor heard anything unusual.

On September 29 Supreme Court Justice Parker, on motion of Prosecutor Stricker, signed an order for the exhumation of the body of Mrs. Mills. An autopsy conducted in the presence of a group of local physicians disclosed that the woman had been shot *not once but three times* with bullets of thirty-two-caliber; *that her throat had been cut so deeply as almost to sever the head from the body;* and that she had *deep lacerations* on the backs of her hands and wrists.

A week later, following a similar court order, the body of Dr. Hall was exhumed. The autopsy that followed revealed

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[2] Lavallette is about fifty-six miles from the scene of the murders.

that the rector had been killed *by one bullet rather than two;* that it had entered the *right side* of the head; and that there were *deep abrasions* on the backs of both hands.

Governor Edwards of New Jersey addressed a letter to the prosecutors of Middlesex and Somerset counties urging them to defer their argument as to which of the two counties had jurisdiction of the case and work together in harmony to clear up the mystery. Spurred by this criticism, the officials made a show of increased activity.

Mrs. Hall announced she had retained Timothy Newell Pfeiffer, a prominent New York trial lawyer and former assistant district attorney under the renowned Charles S. Whitman, as her "special counsel" to "run down the murderers of her husband." What Mr. Pfeiffer actually accomplished—and it was by no means inconsiderable—will appear as this narrative unfolds.

The police ferreted out the fact that three days after the discovery of the bodies Mrs. Hall commissioned one of her relatives to take a coat to a cleaner and dyer in Philadelphia to be dyed black. The lead looked promising, but investigation revealed that it was not the "gray coat" she had worn on the morning of the fifteenth and there were no spots on it. It had been dyed as ordered and returned to Mrs. Hall two days later.

The servants in the Hall household were subjected to exhaustive examinations. The results were negative. None of them contradicted Mrs. Hall. None of them vouchsafed any new information. One of them—Louise Geist, a parlormaid—was destined, though quite unwillingly, to play an important role in the closing act of the drama.

On October 7 Raymond Schneider and Pearl Bahmer again were subjected to severe grilling. This time Schneider came up with a new and startling story. He stated that a young man named Clifford Hayes, who had not previously figured in the investigation, was one of Pearl Bahmer's suitors and so insanely jealous of her associations with other men that he had decided to kill her. On the night of the murders Hayes

trailed Pearl and her father into the woods near the Phillips farm. There he lost track of them and in trying to relocate them came upon a man and a woman sitting under a crab-apple tree. In the darkness he mistook them for Pearl and her father and shot and killed them. Hayes then ran away and sought out Schneider, who was in Buccleuch Park near by, and told him what had happened. Together the two revisited the scene of the shooting and discovered Hayes's mistake. They then returned to New Brunswick.

Some corroboration was given to this tale by Pearl Bahmer, who said that her father was a confirmed drunkard and that early on the night of the murders she had taken him for a walk in the woods near Buccleuch Park, "trying to sober him up." She denied, however, that she had ever been at the scene of the murders or had known anything about them before Saturday morning, when she and Schneider went into the woods looking for mushrooms and found the bodies.

On Schneider's accusation Hayes was arrested and lodged in jail. Schneider was held in custody as a material witness.

A comparatively short investigation sufficed to dispose of the charge against Hayes. Outside of the fact that Schneider and Hayes were acquainted and were rivals for the favors of Pearl Bahmer, there was no direct or circumstantial corroboration of Schneider's accusation. Hayes was a decent young fellow of good family and had never been in trouble. He denied all of Schneider's charges and stood up, calm and assured, under the barrage of questions hurled at him by the police and prosecutors. Schneider's story lacked plausibility. If it was true, who had cut Mrs. Mills's throat? Who had so carefully adjusted the clothing and covered the faces of the victims? Who had scattered the choir singer's love letters over the dead bodies? Schneider's story left these questions unanswered.

The grilling shifted from Hayes to Schneider, and Schneider cracked. He confessed that he had fabricated the entire story because he figured it would put Hayes out of the way and leave him a clear field with the Bahmer girl. Hayes

was promptly released, and Schneider was held to the grand jury to answer to a charge of willful perjury.[3]

The Hayes fiasco brought renewed charges of inefficiency against the local authorities. The newspapers, local and out-of-state, charged that the case had been "badly muddled" and demanded that the investigation be taken over by the attorney general. Apparently not averse to being relieved of a thankless burden, Beekman and Stricker on October 15 joined in a petition to the court for the appointment of a deputy attorney general as "special prosecutor."

Before the petition was acted on, however, there were new and sensational developments. More letters from Mrs. Mills to Dr. Hall came to light and, for the first time, a number of letters from the pastor to Mrs. Mills.[4] These letters definitely reciprocated the passion which exuded from the more numerous billets-doux of the choir singer. To Dr. Hall she was his "Gypsy Queen" and "Wonder-heart." There were references to past and anticipated enjoyments in meetings under the crab-apple trees near the Phillips farm and to a future elopement which would give permanence and security to their relationship.

The real sensation, released by Prosecutors Beekman and Stricker, was that "a highly respected woman" "with no motive for falsifying" had come forward to testify that she was in Lovers' Lane on the night of September 14 and witnessed the murders!

The woman's story, as told to the prosecutors, was never given to the press in its entirety. The prosecutors did, however, disclose the woman's name and from their partial statements and guarded admissions and the confused contradictory statements of the woman herself sufficient copy was evolved to fill columns of newsprint for days.

[3] Schneider was indicted and on December 7, 1922, tried by a jury and convicted of perjury. A week later he was sentenced to two years' imprisonment in the state reformatory.

[4] These were found by Mrs. Mills's daughter Charlotte and, it later appeared, were sold through a New York woman lawyer, who had volunteered her services to the Millses, to a New York newspaper.

The name by which the woman was commonly called was Jane Gibson. Little was known of her background except as she told of it. She said she had been born in Kentucky and educated in a southern seminary. Whatever the actual extent of her schooling, she spoke English and German fluently and, it was remarked, "had a much better education than most women of her class." She had been married to a man named Easton and divorced. A son, William Easton, twenty years of age, lived with her; he was generally regarded as "weakminded" and "slightly off." In 1922 she was just under fifty years of age and was described by the news accounts as a large, muscular, set-jawed, determined-looking woman with dark-brown hair and a ruddy, dark complexion. She lived on a sixty-acre tract of land in a small dwelling remodeled from an old barn. The house was about a hundred feet south of Hamilton Street and, as the crow flies, about a mile and a half from the crab-apple orchard in which the bodies of the minister and the choir singer were found. The woman and her son worked the farm together, raising corn with which they fed their work mules, pigs and chickens. Fattening and selling pigs was her chief source of income. From this she was sometimes referred to as "the pig woman," a sobriquet the newspapers were quick to lay hold of and labor to the end of the chapter.

It is impossible to reconcile the conflicting newspaper accounts of Mrs. Gibson's story as reportedly given to the representatives of the press by the prosecutors and Mrs. Gibson. The narrow area of agreement would seem to be that on the night of September 14 she discovered a thief in her corn patch and saddled her mule and followed the wagon in which the thief made off. This brought her into De Russey's Lane and near the Phillips crab-apple orchard, where she said she saw and heard three men and two women quarreling and heard four pistol shots, followed by the sound of a falling body and some terrified screaming.

Within a few days after Mrs. Gibson's first disclosure it was given out that she had positively identified Mrs. Hall as

one of the women she had seen in the neighborhood of De Russey's Lane on the night of the murders.

The "pig woman" still claimed the headlines on October 22, when Judge Parker announced his decision, directing Attorney General Thomas F. McCran to take charge of the case. On the same day McCran appointed Wilbur A. Mott, a prominent lawyer of Newark and former prosecutor of Essex County, as a special deputy attorney general to represent the State of New Jersey in the subsequent proceedings.

Mott immediately brought his own assistants and detectives from Newark and took over. Beekman and Stricker turned over to him the evidence which had come into their possession and the statements they had taken. Mott's efforts during the ensuing thirty days seem to have been confined to familiarizing himself with the case, interviewing the known witnesses and preparing their testimony for submission to the grand jury.

The regular September grand jury, in adjournment, reconvened on November 20 for the hearing of the special prosecutor's evidence. The presentation lasted seven days. Sixty-seven witnesses, including the "pig woman," appeared and testified. Pfeiffer, on behalf of Mrs. Hall, Henry Stevens, William Stevens and Mrs. Hall's cousin, Henry de la Bruyere Carpender,[5] presented a formal request to the deputy attorney general that his clients be permitted to appear before the grand jury and tell their stories. He offered to waive any immunity they might obtain by so testifying. His sole object, he said, was to submit them to any examination Mott or the jurors might see fit to make. While the request was not formally denied, none of Pfeiffer's clients was asked to appear before the grand jury.

On November 27, 1922, after eighteen hours' deliberation,

[5] In the course of Mott's investigation there were persistent rumors that he would ask for an indictment against Henry Carpender. It was said there were witnesses who would testify that he had been seen running from the Hall home in the early morning of the fifteenth. It was said also that he had consistently refused to account to the police for his time and movements on the night of the fourteenth.

the grand jurors—sixteen men and three women—appeared in open court before Justice Parker and, through their foreman, announced that for reasons which seemed to them sufficient and controlling they had taken no action in the Hall-Mills murder case, but "had laid the matter over."

Mrs. Hall announced her intention of going to Italy for an extended stay—an intention which she put into effect early the following February. She was gone nearly a year. When she returned, the case seemed to have been forgotten. She encountered only the warmheartedness of her many friends. Even the newspapers adopted a kindly attitude. Only passing notice was taken of her return, and her identification with the fifteen-month-old tragedy was referred to briefly or not at all.

Mrs. Hall must have breathed a sigh of relief as she settled down to the familiar routine of life in New Brunswick—her household, her friends, her charities and her church. Three years went by. The frightful experience was behind her. At least she thought it was and, as such things usually go, she had every right to think so.

But the unusual happened. Shortly after Mrs. Hall's departure for Europe, Louise Geist, parlormaid in the Hall household at the time of the murders, married. She took for her husband Arthur S. Riehl, a piano salesman. The union was not a happy one, and in the early summer of 1926 Riehl filed a suit to annul the marriage. Following a not uncommon pattern in such cases, Riehl, to advance his cause and with no thought for incidental consequences, sought by every means to blacken the character of his spouse. Among other accusations of lesser weight he charged his wife with illicit relations with the late Dr. Hall and stated that she had received $6,000 from Mrs. Hall and the Stevenses for corroborating Mrs. Hall's account of her movements on the night of the murders and for the concealment of vital testimony.

It may well be doubted whether this unexpected and belated charge, coming from the source it did, would have effected a reopening of the case had it not been for a coincidental fact. A recently established New York tabloid, intent on developing a circulation through sensationally presented

"news beats," seized on the Riehl story and used it as a spade to resurrect with all the gruesome details the "Crab Apple Tree Murders," the "Lovers' Lane Tragedy," the "Unsolved Mystery of the Slain Minister and His Beautiful Choir Singer." To the previously published and generally remembered facts, it added sinister hints: suggestions that in 1922 the rich Mrs. Hall, the Stevenses, the Carpenders and their influential kin had not only bought the silence of Louise Geist Riehl, but had lavishly dispensed an ample measure of their vast wealth to bribe other witnesses, to call off the investigating police, to soften county prosecutors and to pack a grand jury with well-disposed veniremen.

The tabloid's circulation mounted. Other New York and New Jersey papers took up the cry. Soon all were chorusing the general query: What is the State of New Jersey going to do about it?

The governor of New Jersey at this time was Harry A. Moore. On August 1, 1926, stung by the incessant newspaper needling, he named Alexander Simpson, a state senator and well-known lawyer of Jersey City in Hudson County, as special deputy attorney general to investigate the case and take appropriate action.

Simpson took charge immediately after his appointment had been confirmed by court order. Francis L. Bergen, the duly elected prosecutor of the pleas for Somerset County, while he lent a nominal and grudging assistance, was quite content to have Simpson take the lead and the responsibility for the new investigation.

Senator Simpson's approach to his task was, to say the least, tactless. Somerset County had not forgotten the fruitless efforts of former Special Prosecutor Mott and particularly the fact that they had cost the Somerset County taxpayers $10,000. The feeling against the advent of another outside special prosecutor was definite and intense.

Simpson either did not sense this feeling or deliberately chose to disregard it. He began by charging that the former prosecutors and police had made a mess of the earlier investigations. After the discovery of the bodies the police had

taken no pains to safeguard the scene of the crime for expert investigation for clues. No examination had been made of the clothing of the victims for outsiders' fingerprints. There had been no coroner's inquest. Material witnesses who had presented themselves to the police and prosecutors had been spurned. In some of the police investigations, witnesses had been bullied and induced to change their stories. Officers who had shown too keen a disposition to track down the murderers had been taken off the case. Such clues as existed had not been followed up. The autopsies conducted after exhumation of the bodies were slipshod and inadequate. The evidence submitted to the 1922 grand jury had not been carefully prepared or convincingly presented. Now, he said, important papers—original statements and affidavits of witnesses and the original grand-jury minutes—were missing, and vital exhibits still in the possession of the State showed evidences of having been tampered with.

To Simpson's credit it must be said that he injected into the reinvestigation of the mysterious slayings a vigor which had been conspicuously lacking in the former inquiries. His belligerent and often harsh treatment of witnesses who had previously appeared elicited important information which they had previously withheld. Aided by his personally selected outside detectives, he unearthed a number of new witnesses. Some of these corroborated the "pig woman's" story. Others made statements which, to say the least, raised a suspicion that the detectives engaged by Mrs. Hall and her family in 1922 had done more to cover up than to bring to light the facts and circumstances preceding and following the murders. Over a general protest that it was useless and "ghoulish" in view of the earlier exhumation of the bodies of Dr. Hall and Mrs. Mills, Simpson secured orders for their re-exhumation. The result in the case of Mrs. Mills fully justified the uncompromising attitude of the special prosecutor and furnished one of the many sensations of the subsequent trial.

At Simpson's request a special grand jury was summoned

to meet at Somerville on September 10. It took Simpson and Bergen the better part of five days to present their evidence. On September 15, 1926, indictments were returned against Frances Stevens Hall, her two brothers Henry and William Stevens and her cousin Henry Carpender, charging them with the malicious and premeditated murders of Edward Wheeler Hall and Eleanor Mills.

All the defendants were arrested. Mrs. Hall was released on a bail of $15,000, later increased to $40,000. Bail was denied to the other defendants, and they were held in custody awaiting trial.

The local reaction to the return of the indictments was definitely critical. The Somerset and Middlesex newspapers echoed the street-corner comment: There had been nothing in the alleged new evidence to justify a reversal of the action taken by the grand jury four years before; this last grand jury had cravenly yielded to "outside pressure."

Sensing the hostility he would have to face from a jury drawn from Somerset County, Simpson availed himself of a provision of the New Jersey law and moved the court to order a panel of veniremen from a county in New Jersey other than Somerset, Middlesex, Essex or Hudson. The motion was vigorously and successfully resisted by the defendants' attorneys, and the case was set down for trial at Somerville on November 3, 1926.

The Trial

On November 3, 1926, in the county courthouse of Somerset County, in the usually placid little town of Somerville, the case of the People of the State of New Jersey *versus* Frances Stevens Hall, Henry Stevens and William (alias "Willie") Stevens came on for trial on an indictment charging them with the murder of Eleanor Mills.[6]

The courtroom which was to be the scene of the approach-

[6] Henry Carpender was not included as a defendant in this indictment.

ing battle had more the atmosphere of a place of worship than a place of strife. It was not over thirty feet square. Behind the judges' bench were stained-glass windows, partially obscured by an American flag. Daylight entered the room through a large, circular, colored-glass skylight in the center of a high ceiling. The room had been designed for the usual attendance on the ordinary business of the court of oyer and terminer, not for what the newspapers were calling "the trial of the century." On three sides of the room, well above the courtroom-floor level, were public galleries with seats to accommodate 280 spectators. As the trial opened, nearly half of this space was pre-empted by representatives of the press. Throngs of curious people who were unable to get into the courtroom filled the halls and stairways and surrounded the building.

New Jersey law required that in counties of the class of Somerset the court of oyer and terminer, in the trial of a capital case, should be constituted of a justice of the supreme court and a judge of the court of common pleas. The judges sitting were Supreme Court Justice Charles W. Parker and Judge of the Court of Common Pleas Frank L. Cleary.

Justice Parker's service on the bench dated back nearly a quarter of a century. He had presided in many famous criminal and civil cases and was generally esteemed an able, patient and impartial judge. Judge Cleary, much younger than Justice Parker, naturally deferred to the older man as his senior in rank and experience. Rulings on motions and objections were announced by the supreme-court justice after consultation with his junior colleague.

Attorneys appearing for the State were the special deputy attorney general, Senator Alexander Simpson, and the prosecutor of the pleas for Somerset County, Francis L. Bergen. Senator Simpson shouldered practically the entire burden of the trial—opening statement, direct examination and cross-examination of witnesses and the summing up. Prosecutor Bergen lent his presence and little else.

Simpson was an experienced trial lawyer. In populous

Hudson County he had tried many important civil and criminal cases. Contemporary newspaper accounts characterized him as "a wily and determined fighter" with "the alertness and tenacity of a fox terrier."

The legal line-up for Mrs. Hall and her brothers—the New York tabloid called it the "Million Dollar Defense"—was formidable both in number and quality.

Leading was former Attorney General of New Jersey Robert H. McCarter, probably the most widely known trial lawyer in the state. Although he was in his early seventies, his vigor throughout the long trial matched or exceeded that of any of his associates.

McCarter's chief aide was State Senator Clarence E. Case, who, although considerably younger than General McCarter, was an able trial lawyer of wide experience. He was a resident of Somerville and represented the Somerset and Middlesex district in the state legislature. He was locally well-known and popular.

Others associated as counsel for the defense were Timothy N. Pfeiffer and Anthony Palzer of New York, Augustus C. Studor, Jr., of Newark and Robert H. Nielson and Russell B. Watson of New Brunswick. All were lawyers of outstanding ability.

The business of selecting a jury proceeded with the dispatch associated with "Jersey justice." From a list of 120 men and women regularly drawn from Somerset County, sixty men were called for service. Examinations and challenges consumed less than an hour and a quarter. The jury sworn to try the case and "a true deliverance make" between the State of New Jersey and the prisoners at the bar consisted of six farmers, two clerks, a factory superintendent, a mason, a blacksmith and a teamster. All were married, and a majority were past middle age.

In view of the number of witnesses to be presented, Senator Simpson's opening statement of what the State expected to prove was surprisingly brief. The defendants, he said, were being tried for the murder of Eleanor Mills—the cruellest and

most fiendish murder in the criminal history of the state of New Jersey.

In a quiet, tense voice, with effectively punctuated emphasis, he gave the jury a dramatic recital of the finding of the bodies and what he termed the background and motive for the crime. There had undoubtedly been an intimacy between Dr. Hall and Mrs. Mills "that was not spiritual." It had been going on for a long time, and Mrs. Hall knew of it. People spied on the couple and carried reports to Mrs. Hall of what they saw. Some of the love letters that passed between the two came into her possession. Mrs. Hall was a strong, proud woman and was deeply wounded—perhaps more in her pride than in her affection.

On September 14, 1922, Mrs. Hall accidentally overheard a telephone conversation between her husband and Mrs. Mills in which they arranged an assignation later in the evening in De Russey's Lane. The doctor left shortly after, saying simply that he was "going out." Then Mrs. Hall collected the love letters and summoned her two brothers, Henry and William Stevens, and her cousin Henry Carpender. Together they set out to find and confront her errant husband with the proof of his infidelity. A quarrel and the murders were the result.

Senator Simpson sketched the anticipated testimony of Mrs. Gibson and the collateral evidence which would be offered to corroborate it. On the basis of all the evidence, he declared, there could be no escape from the conclusion that all the defendants were guilty of participation in the murders.

It was an effective statement. Defendants' counsel reserved their right to reply until the close of the State's case, and the hearing of the evidence was begun.

The prosecution called eighty-four witnesses. Not all of these aided its case. A number of them possessed only hearsay information and, upon prompt objection, were permitted to tell the jury little more than their names and addresses. A larger number proved distinctly hostile to the prosecu-

tion and either failed to give the testimony expected of them or gave testimony favorable to the defense.

Senator Simpson's strategy (if such it may accurately be called) seems to have been to call everyone suspected of having knowledge of any of the facts deemed material and trust to the compulsion of the oath, pointed examination and confrontation with earlier statements to compel the revelation of such knowledge.[7]

General Evidence

Three police officers and one other person who were at the scene within fifteen minutes after the crime was reported described the location, position and condition of the bodies and told of their removal to Somerville. These also testified that numerous letters and cards lay scattered on the bodies and on the ground near the bodies. One card that particularly claimed attention was a visiting card of Dr. Hall's which was sticking up in the grass about eight inches away from the rector's right foot.

The officers found on the ground also a thirty-two-caliber empty pistol shell, an iron bar an inch in diameter and three feet long, a bunch of keys (it later developed that they were Dr. Hall's) and two large pocket handkerchiefs—one with an embroidered initial "H" in the corner.

These articles, together with various pieces of clothing taken from the bodies of the deceased, the minister's eyeglasses, sixty-one cents in change found in his pocket, two other empty thirty-two-caliber pistol shells picked up later at the murder scene and four bullets—one found beneath the minister's coat and three extracted from Mrs. Mills's skull at an autopsy—were turned over to Prosecutor Beekman "for safekeeping."

[7] The presentation of the prosecution's case followed no chronological or other ordered plan. The result is a confused record, difficult to follow. For this reason the order in which the witnesses were actually called has been disregarded and the testimony grouped under pertinent headings.

All these items constituted what is known as "real" evidence. Such items, after proper identification and proof that they are in the same condition as when found at the scene of the crime, are usually received in evidence in a homicide case as a matter of routine. In the Hall-Mills case Special Prosecutor Simpson labored under a distinct disadvantage that was none of his making. The usual careful practice of police and prosecutors of marking for identification, keeping in strict custody and preserving intact vital pieces of real evidence, so as to guarantee their authenticity when produced on the trial of the case, had not been followed. Beekman put them in an envelope and gave the envelope to the warden of the Somerset jail to put in his safe. Thereafter almost anyone connected with the case had access to them and could take them out. Some of the items disappeared. The rector's eyeglasses were broken. The visiting card which had stood in the grass at the foot of the dead pastor—and which, as it turned out, was the State's most important exhibit—traveled a devious course. Fingerprint experts, unaccompanied by police officers, were permitted to take it to their laboratories. One of these—for good will or a more substantial consideration—"loaned it" to a newspaper reporter, who in turn delivered it to his editor; it was photographed for publication and then kept in the editor's safe for months! Simpson's chief investigator retrieved it from the enterprising editor a few short weeks before the trial. Only after long and strenuous argument was the prosecutor able to convince the Court that the card produced in court was actually the card picked up in the Phillips apple orchard and that it was in the same condition as when discovered four years before. The Court admitted the card, and experts were permitted to give opinions as to whose fingerprints were on it; but what might well have been a *convincing* piece of circumstantial evidence became through inept handling a subject for speculation and doubt.

The State's evidence with respect to the handling of the bodies and their examination before interment and after subsequent exhumation was hardly less shocking. Police officers

testified that the bodies were delivered to one Sutphen, an undertaker in Somerville, at 2:45 P.M. on Saturday. Sutphen testified that without an official order and within twenty-four hours he delivered the bodies to Undertaker Hubbard of New Brunswick.

Hubbard, who was also the coroner of Middlesex County, corroborated Sutphen as to the receipt of the bodies. He said he was asked by a lawyer named Florance, representing Mrs. Hall, to prepare Dr. Hall's body for burial and by James Mills to perform a like service for Mrs. Mills. Strangely enough, he was not asked to tell the condition of the bodies. He testified he "thought it was murder, but as long as no one ordered him to do so, saw no necessity for either an inquest or an autopsy"!

Dr. Edward I. Cronk, health officer for New Brunswick, testified he saw the body of Mrs. Mills in Hubbard's undertaking parlor on Sunday afternoon and, at the request of either Mr. Hubbard or Lawyer Florance, opened Mrs. Mills's abdomen to determine whether or not she was pregnant. He found she was not. He did not look at Mrs. Mills's throat, but was sure there were bullets in her skull.

Hubbard, the undertaker, denied Cronk's statement that he had directed that the woman's abdomen be opened.

Dr. Runkle Hageman, a New Brunswick physician, testified that he performed autopsies on the two bodies in 1922 after they had been exhumed on court order. He said there were three bullet wounds in the woman's head and a small punctured wound in her upper lip. Her throat had been cut clear through the deep muscles almost to the spinal column, and the windpipe and esophagus had been severed. He extracted the bullets from the skull and "gave them to somebody," he "didn't know who." He did not open the woman's mouth. Dr. Hall had been killed by a single bullet, and there were abrasions on his hands and arms.

To neutralize this area of stupidity, uncertainty and contradiction, Senator Simpson had seen to it that the autopsies performed at his request after the recent second exhumation

were conducted by a specialist of unimpeachable competence, experience and integrity. The man he selected was Dr. Otto H. Schultz, medical assistant to the district attorney of New York. Dr. Schultz had performed hundreds of autopsies, most of them in homicide cases. His testimony was expertly presented and provided one of the sensational spectacles of the trial. Realizing the difficulty of getting his findings over to the jury by descriptive language alone, he had provided himself with what he called a "manikin." This was a plaster-of-Paris cast of the head and bust of a human figure. It could be parted in sections, revealing segments of the skull and the brain inside. The grisly exhibit was placed on the rail in front of the jury, and a strong artificial light was thrown down on it.

With illustrating pencil in hand Dr. Schultz testified that there were three bullet wounds in Mrs. Mills's head. He marked them on the manikin. One was in the middle line of the forehead two inches above the level of the brow. The course of this bullet had been through the frontal bone, backward and slightly upward through the brain. A second one was in the right cheek, half an inch below the outside angle of the right eye. This bullet had passed downward through the cheekbone and into the skull cavity. A third wound was on the right side of the head about two inches above the opening of the ear, and the course of the bullet was upward through the skull. All the wounds measured eight millimeters of 32/100 of an inch, indicating they had been made by thirty-two-caliber bullets. The points of entrance of the three wounds were less than four inches apart. Any one of the wounds would have been sufficient to cause death. In Mrs. Mills's upper lip there was a superficial puncture wound which did not look like a bullet wound but could have been made by a blow.

The doctor then proceeded to describe and illustrate on the manikin the wounds in the neck. The throat had been cut apparently from left to right. The muscles of the neck, the large blood vessels and the gullet and windpipe had been

cut clear through to the spinal column. The upper part of the windpipe, the larynx and tongue were missing!

"Those were all of the organs used in singing," interjected Mr. Simpson. The witness answered, "Yes," and in response to a further question said, "There was no indication as to how they [the organs] had been taken out. They were gone, they were missing, but I think I can state that they could not have been pulled out. . . . They had to be cut out."

Dr. Hall had been killed by a single bullet which had entered four inches above the opening of the right ear, passed through the frontal bone and exited at the base of the skull. From the course of the bullet it was evident that Hall when shot must either have been in a stooping position, "or else somebody would have had to be above him, or his head was tilted forward." There were no powder marks or burns on the skin of either body, indicating, said the doctor, that the weapon used in the killings had been held at least a foot away from the victims.

The special prosecutor called a number of witnesses in an effort to prove that Mrs. Hall, her two brothers, her cousin and her Dodge sedan were in or near De Russey's Lane on the night of September 14, 1922.

Ralph Gorsline, a vestryman of St. John's Church, was the first of these. Simpson presented him as a "hostile witness." Forty-seven years old and married, Gorsline worked for a company owned and operated by a relative of Mrs. Hall and her brothers. His testimony, considerably at variance with his earlier statements to the police, was that he and Miss Catherine Rastall were in a "little lane" just off De Russey's Lane at a point before one reached the Phillips farm and the so-called "Lovers' Lane" which led into it. They arrived there in Gorsline's auto about 10:15 P.M. Gorsline said he knew where the Phillips apple orchard was and that his car was about 700 feet away from it. Only a few minutes after he stopped and turned off his lights he "heard mumblings and what sounded like men's and women's voices off in the distance"; "they seemed to come from in back of the Phillipses'

farm." Then he heard one shot, followed by a woman's scream, then three shots in quick succession and then moaning and peculiar noises as though someone was trying to stifle the moaning. He did not get out of his car, but immediately started it up and left the vicinity.

This much of Gorsline's story was elicited without too much difficulty; he then stated that he knew no more than he had already told. Simpson, over the violent objections of defense counsel, launched forth with a series of angry, impeaching questions. Had not the witness told newspapermen he had seen Henry Stevens in De Russey's Lane with a gun in his hand? Had not Henry Stevens said to him, "What the hell is it your business, get out of here," and fired two shots at his feet? "Absolutely no," answered Gorsline. Had he not so stated to William Garvin, a Burns Agency detective, on October 1, 1922? "Absolutely no!" shouted Gorsline.

William Garvin was later called. A former New York manager for the Burns Detective Agency, he had tried unsuccessfully to interest the Somerset County authorities in engaging the agency's services. This activity had brought him to New Brunswick, and his presence there had been generally known. He testified that he remembered a man calling on him at his New York office on Sunday, October 1, 1922. The man told him his conscience was bothering him and he wanted to tell the truth: that he had been in De Russey's Lane on the night of September 14, 1922, but had not yet told anyone about it. On that night he saw Henry Stevens in Lovers' Lane with a revolver. He ran up the bank, and Henry Stevens hollered at him, "What the hell are you doing here, this is none of your business, get the hell out of here," and fired two shots into the ground. Then, the man said, he turned and ran away as fast as he could. Garvin reported this conversation to Sherman Burns, secretary of the Burns Agency.

During this recital Gorsline had been out of the courtroom. He entered just as the witness finished his direct examination. Dramatically Simpson shouted, "Gorsline, come up

here where we can see you." Gorsline made his way toward the witness stand. "Is this the man who came to your office on October 1, 1922, and told you this story?" Simpson asked Garvin. "Turn around the side view of your face," said Garvin. Gorsline obliged with a side view. "That's the man," said Garvin, and his tone was positive.

General McCarter subjected Garvin to a sharp cross-examination. Was not the witness commonly known as "Greasy Vest Garvin"? The witness admitted that at times he had been thus referred to. He admitted also that he had been asked on two previous occasions to identify Gorsline as the man he had talked to and had said only that he was "pretty sure" Gorsline was the man. Garvin said he relayed the stranger's story to Prosecutor Beekman, but Beekman said he "was not interested." When Garvin was asked to describe the furniture in Beekman's office he became hopelessly confused.

An embarrassed Catherine Rastall followed Gorsline on the witness stand and her testimony almost completely paralleled his. She said they left immediately after hearing the shots and she arrived home at exactly 10:30 P.M.

Another witness who failed to live up to Simpson's professed expectations was Elijah K. Soper, a fifty-year-old New Brunswick oil salesman. He testified that just before midnight on September 14, 1922, he was returning by automobile with his wife and another couple from a lodge meeting in Somerville. At a point in De Russey's Lane a short distance east of Easton Avenue he noticed a green or black touring car with two men in the front seat and a woman wearing a light coat in the rear seat. The parked car with its lights dimmed was facing him, and he could plainly see the occupants of the car when it came within the range of his bright lights. He knew Mrs. Hall and Willie Stevens, but was unable to identify them as occupants of the car.

Simpson, claiming surprise, undertook to impeach the witness. Did he know Ira Nixon, a fellow employee of the oil company? Soper admitted that he did. Had Soper not (at a time and place specified) told Nixon he had recognized

the people in the car as Mrs. Hall and her two brothers? Simpson demanded. The witness denied positively that he had made that statement to Nixon or to anyone else.

Ira B. Nixon was immediately called to the stand and testified with equal positiveness that Soper had made that statement to him shortly after the murders had been made known. Cross-examination of Nixon failed to shake his testimony.

Two other witnesses declared that between 11:30 and midnight on September 14 they were driving or riding in automobiles which passed the intersection of Easton Avenue and De Russey's Lane. One of them said that at or near that point he noticed a parked, unlighted Dodge sedan and saw three persons slide down a bank near it. The other said he saw a parked Ford sedan with lights off and curtains drawn facing New Brunswick. That car, he said, came squarely within his lights, and he was certain there was no one in it.

With the exception of Mrs. Jane Gibson and one other witness whose testimony will be summarized later, these were all the witnesses called by the prosecution who claimed to have been in the neighborhood of the murder scene on the night of September 14. Neither Raymond Schneider nor Pearl Bahmer, who were the first to discover the bodies, was called.

Mrs. Mills's daughter Charlotte and her husband James Mills were both produced as witnesses.

Charlotte identified a photograph of her mother and related her own and her mother's movements on the afternoon and early evening of September 14. She had arrived home from school about four o'clock. After supper she saw a newspaper clipping in her mother's hand which contained an article by a Reverend Dr. Stickney on the subject of a churchman's divorce. Her mother left the home about seven, saying she was going to take the clipping to the church and put it in Dr. Hall's desk. She returned in about fifteen minutes and told Charlotte that her neighbor had just told her that Dr. Hall had been trying to reach her during the afternoon. In a few minutes her mother again left the house, saying she was going up the street to telephone. It was then about

7:30 P.M. This was the last time Charlotte saw her mother alive.

James Mills, husband of the murdered choir singer, was a pitiful witness. Although only forty-eight, he was described by the attending newspapermen as "wrinkled and gray, gaunt, his cheeks shrunken, and his face the color of dough." In a weak and faltering voice he replied to Simpson's impatient and often sarcastic questions with timid answers, generally prefaced with "I guess," "It seems," "I ain't sure, but" and similar qualifications.

This was his story: He had lived in New Brunswick all his life. He had married Eleanor in 1905, and she had borne him two children—Charlotte, now sixteen, and Daniel, twelve. Although a shoe cutter by trade, he had for some years before his wife's death been janitor at the Lord Sterling public school in New Brunswick and, during the preceding year and a half, had also been employed as sexton at St. John's Church. His total average earnings were around thirty-five dollars a week.

On Thursday evening he reached home at 6:15 P.M. and had supper with his wife and children. After the meal he went out onto the back porch and started "fixing some window boxes." His wife left the house at 7:30. He gave no testimony as to what conversation he had with her, if any, before her departure. He continued to work until it was 9:45 and too dark to see. The children, who had been "out," returned at about the same time and went to bed. He stayed in the house until 10:30 or 11:00 waiting for his wife's return, then left and walked down the street a short way to a store, where he got a soda. On his return journey he passed the church. Some of the lights were on and some of the windows open. He went in, closed the windows, turned out the lights and locked the door. It was about 11:05 when he reached his home. His wife had not returned. About 11:20 he went to bed, leaving a light burning.

Mills awoke about 2:00 A.M. and went to his wife's room. She was not there. He dressed and again went to the church. His explanation of this second trip was that his wife had

undergone a serious kidney operation the preceding February and had since been subject to fainting spells, and he went to the church because his wife frequently went there to tidy up the altar and the pastor's study and he thought she might have fallen in a faint and hurt herself. When he got to the church he turned on the lights and for fifteen or twenty minutes searched the place, but found no trace of his wife. Then he again put the lights out and went home and to bed.

At 5:45 he awoke. His wife had not come home. He went to a near-by store and purchased some buns, came back and made breakfast for himself and the children. Then he went to the Lord Sterling school. Between eight and nine he went to the church, where, in Dr. Hall's study, he met Mrs. Hall. In answer to the prosecutor's direction, he attempted to give the exact conversation:

"She said to me, 'Good morning, Mr. Mills.' I said, 'Good morning, Mrs. Hall.' She said, 'Did you have any sickness in your house last night?' I said, 'No.' She said, 'Mr. Hall did not come home all night.' I said, 'My wife has not come home all night,' and, as something cropped up, I said, 'Do you think they have eloped?' and she said, 'Goodness, I think they are both dead and can't come home.' "

The next time he saw Mrs. Hall was at twelve o'clock Friday at his home. She was there for only a minute to ask if he had heard anything. He told her, "No." She had notified the police about a possible accident, she said. He next saw Mrs. Hall about five o'clock the same evening. Again she asked if he had heard anything, and he said he had not and would let her know if he did.

Mills learned of his wife's death on Saturday afternoon about 1:30 and arranged with Undertaker Hubbard about the funeral. He heard she had been shot, but did not look at her body and did not know until after the first autopsy that her throat had been cut.

On the cross-examination of James Mills by defense counsel it was developed that Mrs. Mills had taken frequent auto-

mobile rides with Dr. Hall and on the day before the murders she had gone on a picnic to Lake Hopatcong with Dr. and Mrs. Hall, Dr. Hall's mother and Minna Clarke, a church worker and close friend of Mrs. Hall. General McCarter brought out also that Mills had seen Dr. Hall at the church at 6:00 P.M. on Thursday evening. Mills denied that he had quarreled with his wife that evening and said he had no recollection of ever having told Ellis Parker, a detective from Mount Holly, New Jersey, that on Thursday evening Mrs. Mills said something about his jealousy of Dr. Hall and that he (Mills) "made a hell of a house for her."

McCarter made much of Mills's suggestion to Mrs. Hall that the rector and his wife might have eloped. Why had he made such a statement? The only answer Mills could give was "It just popped into my head." Asked why he had not made any inquiries for his wife during Friday and Saturday morning, Mills answered that Mrs. Hall told him she had notified the police and he thought that was enough. Furthermore, he said, his wife frequently left him without notice for a day or two to visit one of her sisters.

Mills admitted he had been a party to the sale to a New York newspaper of some of the letters Dr. Hall had written to his wife. He could see no impropriety in this.

A dozen witnesses testified to the intimate relationship between Dr. Hall and Mrs. Mills. Two of these swore that at different times and places they surprised the couple when Mrs. Mills was sitting on the rector's lap. Mrs. Opie, an Argus-eyed next-door neighbor, declared that Hall visited Mrs. Mills several times a week and called her on the telephone at least twice a week. His visits, she said, were long ones and always occurred when Mills was at work and the children away at school.

Mrs. Marie Demarest described an occasion in May or June 1922 when she and her daughter were taking an automobile ride in Buccleuch Park and she saw Dr. Hall and Mrs. Mills sitting together on a park bench. She saw Ralph Gorsline and Mrs. Minna Clarke standing not far away and apparently "spying" on the pair.

Charlotte and Mrs. Mills's two sisters said Mrs. Mills had confessed to them her love for Dr. Hall. One of the sisters added that Mrs. Mills told her she and the doctor were planning to get divorces, move to Japan and "make a new life" as soon as Charlotte completed her course in high school.

The clinching proof of the relationship and its nature was revealed by the letters and notes that had passed between the rector and Mrs. Mills and by entries in a diary which the doctor had kept during a vacation absence in Maine in the summer of 1922. All these were properly identified, offered in evidence and read to the jury. To the regularly elected local prosecutor, Bergen, who was younger and more of an elocutionist than Simpson, fell the task of reading the ardent missives.

These were manna for the press. Not one escaped quotation. Space will not permit the reproduction of all the burning exchanges. A few specimens must suffice.

Here is a poem written by the dominie to accompany his Christmas gift of a "red, red rose":

> This red, red rose, my Christmas gift to you,
> Is but a symbol of love, devoted, faithful and true.
> For love is like a rose, dear heart, fresh as early morn.
> God took the beauty of the skies, the glory of the dawn,
> The fire of passion, the call of evening, the golden glow,
> And with the mystery of the stars he made the love we know.
> So in this rose you find me, dear, the love it can impart;
> Love, loyal, true and absolute, the offering of my heart.
> Christmas Day—1921—E. W. H. D. T. L.[8]

Here are samples of the notes from the rector to his "wonder-heart":

Dear, Dear, Darling Wonderheart of Mine: Your Saturday letter has come and all of your dear letters and poems. Just a line before this mail goes. Friday night at 8 P.M. Our

[8] One sister said Mrs. Mills had told her that "D.T.L." were the first letters of the German *"Dein Treue Lieber"* (Thy True Love).

road beyond Parker House. I will see nobody before I look down into those deep, wonder eyes of love, and look up to this wonder world of love that we are living in, a world infinitely more wonderful than the beauties of physical nature, as wonderful as they are. Ever, always and devotedly. D. T. L.

Dear, Dear, Tender Wonderheart of Mine: Have you felt the exalted mood I am in today? Darling, I have so longed to talk, talk, talk with you while holding you in my arms. I am not wild or fierce today or possessive, but calm, strong, exalted. Such an assurance. I feel like Tennyson's strong son of God. Immortal love. Dearie, dear heart, I want to hold you close, commune with you, hold you tight with my left arm and drag your dear firm face and body with my right arm and look deep down into those wonder eyes, hazel eyes. Dearest, you are like crystal to me. I will call you "crystal eyes." I seem to see and feel all of the awe and wonder of the universe in them, and I am full of awe and wonder today. I want you and music. . . . Let's meet at our road at 2:15. I will get there first so that you will not have to wait if it rains. If you suggest another place call up 74 between 1 and 2 and I will answer the phone. Beloved heart, you are the wonder of life for me—life, love, will-power, affection are all bound up in you, the true Eve, the mother of life and love for me. I feel your firm strong fingers gripping mine, as we crush one another in a warm, strong embrace. Your darling D. T. L.

The preacher's vacation diary held such lines as these:

I am radiant tonight because of your letter. Good night, wonder-heart of mine.

I long to be with you again and clasp you to me. I kiss you all over.

Dearest, these days are weeks long. How can I stay away from you so long? I don't know myself. I want to fondle and caress you, oh, so much. I want to hold you close in my arms and know you are safe and happy and warm—dearest, we were made for each other's arms. That is our Heaven, our

home, and every moment away from there is a moment away from home. Good night, dear, darling beloved. All the universe of love crushed into my love for you.

Mrs. Mills's effusions, while not so scholarly as those of the enamored dominie, were no less passionate. These will illustrate:

Dear Darling Boy: I love you more when you love me as you did today—not so much physically but prayerfully, exalted, and you see, darling, the physical fits in and doesn't dominate—it was there just the same and not to be denied, never. Dearest, believe me, won't you? Never will I say you want my body rather than me—what I really am. I know that if you love me you will long and ache for my body. Have I ever tempted you, dear? Have I ever made you want me? I never want to. Dearest, there isn't a man who can even make me smile. As you said today, our hearts are as true as steel. I am not pretty. I know there are girls with shapely bodies but I am not caring what they have. I have the greatest of all blessings—a noble man's deep, true, eternal love—and my heart is his. My life is his. All I have is his. I am his, forever. Honey, I am awful lonesome for you tonight. I want to talk to you. I feel so full of thoughts. Why do I cry so? Oh, it pains me to cry. I will hate the winter nights. Then I will dream of crawling up in a chair with you —but what dreams I have. Will it ever be? God knows best, dear.

Dearie: . . . Now and hereafter I will never escape this longing until our souls are one. I hate to come back to realities—I always have to. . . . I long for the time when I will have you forever. Dreams—no yearnings. All earth's longings are now fulfilled. Yesterday I was happy in a way, on the boat and in the water. But then, to be denied again. And I feel I never want to hear you say again "I love you" or caress or kiss me so hard it hurts. You haven't the right to and then wake me up. . . . You see we are afraid by having such a great love. But, always it is so and ever will be—we must always take the bitter with the sweet. But I hope I don't see you today. What is the use when you always leave me? Oh, my darling babykins, what a muddle we are in. But I will be

content. I will. I don't know why I feel this way today. It will pass, as you know. God knows all. I know that as much as I know you are my true heart. He is watching and caring and we are never alone. He is always near—in whatever we do, even in physical closeness. He is near, for we know He meant His children to taste deeply of all things. . . . You are the true priest—born for it, and because that is your supreme joy and satisfaction. I am merely your physical inspiration, and you see in me what you teach, you, the priest.

Whatever else can be said for the case made by the special prosecutor, he established the relationship between the Episcopal divine and his choir singer beyond all reasonable doubt.

While, as indicated, there was some evidence that the couple was spied on by meddling busybodies, there was no evidence, as Simpson promised the jury there would be, that their discoveries were reported to Mrs. Hall.

The Particular Evidence against Henry Stevens

Anna and Edward Hoag, a respectable couple who occupied a part of the old Phillips farmhouse, were the first witnesses who specifically directed testimony to Henry Stevens. The sum of their evidence was that about a year after the murders, in the early evening of a day whose exact date they could not remember, a well-dressed man came up the steps of their porch and inquired of Mrs. Hoag the way to Raritan. She told the man she did not know where Raritan was, but pointed out a course which would take him to a streetcar stop and suggested that the conductor of the car could undoubtedly direct him. The man was extremely nervous, he trembled and looked faint so she asked him to sit down. He did so and began to talk. He said he had been in Florida for the winter and then "suddenly switched the subject" and began to talk about "the tragedy which had happened at this place." This frightened her, and she ran into the house. The man got up, got a drink of water at the pump and

hurried to the road. When he reached it he "nearly collapsed," but recovered himself and disappeared.

Mr. Hoag had not participated in the conversation with the stranger, but said he overheard it. Both witnesses positively identified Henry Stevens as the man they had seen.

Senator Case's cross-examination failed to shake their testimony, but did bring out that both had testified at the preliminary bail hearing to having heard some shots fired on the night of September 14, 1922, and had then said nothing about the later visit of the strange man.

Henry L. Dickman, a United States prisoner on Governor's Island, serving a sentence for desertion from the United States Army, was brought to Somerville to give testimony against Henry Stevens. Dickman formerly had been a member of the New Jersey state-police force and in 1922 and 1923 had worked on the Hall-Mills case. One of his assignments in the case had been to take a statement from Henry Stevens, and he had interviewed Stevens at Lavallette "sometime in February of 1923." His version of the interview was that he asked Stevens if he had been in New Brunswick on September 14 and Stevens said, "No." Asked where he was on that day, Stevens replied he was on the beach at Lavallette, fishing with a Mr. Mellinger of Philadelphia. Dickman asked if Stevens owned a thirty-two or thirty-eight-caliber revolver, and Stevens answered he had owned such guns at various times. Stevens was nervous and evasive, answered the questions put to him very shortly and volunteered nothing.

Senator Case's cross-examination of Dickman emphasized his discreditable military record. He had deserted not only from the Army, but at an earlier date from the Navy. For the Navy desertion he was sentenced to and had served a year's imprisonment. The cross-examiner developed also the fact that the witness had quit the New Jersey state-police service without notice. This last gave Senator Simpson the opportunity to bring out on redirect examination the reason Dickman had left the force. The deserter said with apparent relish that he "had been given an inducement to leave";

specifically, that former Prosecutor Beekman had given him $2,500 "to get out of the Hall-Mills case and stay out of it." The testimony could not be contradicted. Beekman was dead.

Mrs. Marie Demarest, a cousin of Mrs. Hall's friend Minna Clarke, testified that she saw Henry Stevens on the public street in New Brunswick on the morning of September 15, 1922. In the following October she was visited by Defense Detective Di Martini, who told her she was hurting her cousin and hurting Henry Stevens by saying this. He then added, "You have just taken over this place and have a $2,500 mortgage on it. How would you like to have that mortgage and a little more to keep your mouth shut?" Mrs. Demarest spurned the suggestion, repeated that she had seen Henry Stevens in New Brunswick on the fifteenth and had told Minna Clarke she had seen him, and that she "would rather go to work in a factory than take Dr. Hall's blood money to keep her mouth shut."

The Particular Evidence against William Stevens

The strongest item of evidence against William Stevens was the visiting card of Dr. Hall which, it had been testified, was found standing upright in a tuft of grass at the feet of the dead rector. Detective Totten testified that the card when he found it had what looked like bloodstains on it, but with the naked eye he could discern no fingerprints.

However, three witnesses who qualified as "fingerprint experts" stated that a print of a left index finger was found on the card and "developed"; a print was taken of William Stevens' left thumb and left index finger; and the fingerprint on the Hall visiting card and the fingerprint of William Stevens' left index finger "compared."

The testimony of all three experts was highly technical. That of Joseph A. Faurot, a retired deputy police commissioner of New York City who said he had studied the "science of fingerprints" in Europe, was the most comprehensive. He

produced as aiding paraphernalia a dozen or more "enlargements" and "transparencies" of the card and the William Stevens specimen, together with a "viewing box" whose interior was lighted by an electric bulb of high wattage. He explained that the prints on both the card and the William Stevens specimen were what are known as the "arch type" and were possessed by only about five per cent of the human race. In his viewing box Faurot superimposed one print (the card) over the other (the William Stevens specimen) and, after pointing out what he said were "definite similarities," declared that "they matched perfectly."

General McCarter's cross-examinations of the fingerprint experts were long and searching. Much of the questioning was directed to showing that the careless manner in which the card had been handled had impaired any original impression that had been made on it and rendered it difficult, if not impossible, to give an opinion of its identity with any other specimen fingerprint. The process by which the print on the card had been developed was questioned. One expert was forced to admit that all fingerprints of the "arch type" looked very much alike and were extremely difficult to differentiate.

Louise Geist Riehl related that when she came downstairs on Friday morning Willie Stevens was already up. He appeared very nervous. "Why are you up so early, Willie? What's the matter?" she asked him, and William answered, "I would rather not tell you. I would rather for Mrs. Hall to tell you." In answer to a further question William replied, "There was something terrible happened last night, and Mrs. Hall and I have been up all night."

A member of the New Brunswick fire department who had known William Stevens for fifteen years and seen him at the firehouse almost every day of that time testified that, either on September 15 or 16 and certainly before the bodies had been reported found, William came to the firehouse and said that if he acted queer not to mind it, he had some trouble.

The special prosecutor had told the jurors in his opening

statement what they probably knew already, that "Willie" was considered "a little off mentally." The testimony of Mr. and Mrs. John S. Dickson, if believed, not only supported this conclusion, but put "Willie" close to De Russey's Lane on the night of the murder.

The Dicksons were respectable people. Mr. Dickson had regular employment as an accountant with a reputable New York brokerage house. He and his wife and their three children had made their home for a number of years in North Plainfield.

About 8:30 on the evening of Thursday, September 14, 1922, they said, a strange man who appeared to be "agitated and confused" came to their open front door and asked the direction to the Parker House.[9] He seemed to have difficulty in expressing himself—"sort of stuttered." Mr. Dickson replied he did not know the location of the Parker House and asked what kind of a place it was. The stranger said it was a home for the aged near Bound Brook; his sister had driven him to the Parker House earlier in the evening and dropped him there, but he had wandered off and lost his way. Mr. Dickson told him that Bound Brook was seven miles from North Plainfield and asked how he had got to their home. The man said he had walked.

He then asked them if they would show him the way to Bound Brook. Mr. and Mrs. Dickson walked with the stranger to a near-by street corner, where he could get a streetcar for Bound Brook. They offered to give him carfare, but he said he had plenty of money. They noticed that he had a gold watch, attached to a heavy gold chain. On the way to the car stop the man told them that he suffered from epilepsy. They left the mysterious stranger at 8:45 at the corner, waiting for a streetcar, and returned to their home.

When they were asked if they could identify any person in the courtroom as the man they had seen and talked to on that Thursday night, Mr. and Mrs. Dickson left the stand and

[9] A home for the aged on Easton Avenue a short distance north and east of De Russey's Lane. It was frequently mentioned in the testimony.

walked unhesitatingly to the chair in which William Stevens sat, put a hand on his shoulder and declared positively that he was the man.

Senator Case's long cross-examination of the Dicksons failed to confuse them or weaken their testimony. Two facts were developed of which the defense later made capital. Both witnesses testified the man they had seen wore a derby hat and did not have on glasses.

The Particular Evidence against Mrs. Hall

A private night watchman who worked in the Nichol Avenue district testified that in the early morning of September 15, sometime between 2:40 and 2:45, he saw a woman go into the side door of the Hall home.

The milkman who delivered milk to the Halls said that he made his customary delivery between 4:00 and 5:00 A.M. on Friday and found one of the rear doors open. That had never happened before.

George Totten, one of the Somerset County detectives, testified that he was present when Prosecutor Beekman interviewed Mrs. Hall three days after the murder. Mrs. Hall did not volunteer anything about having been out of the house in the early morning of the fifteenth until he told her that the prosecutor had positive information that either she or some one of her servants had entered the house between 2:30 and 3:00 o'clock in the morning. Then Mrs. Hall said, "Well, that was me." She explained that she had become alarmed when Dr. Hall did not come home and had awakened her brother, and together they had gone to the church to see if possibly Dr. Hall had fallen asleep in his study. Not finding him there, they had gone to the Mills house and, seeing it dark, had returned to her home and entered together by the side door.

John Toolen, who in 1922 had been an assistant prosecutor for Middlesex County, produced and read in evidence an affidavit he had taken from Mrs. Hall on September 23. In

addition to recounting her movements on the early morning of the fifteenth she stated that late in the afternoon of the fourteenth someone called Dr. Hall on the telephone. Mrs. Hall was on the first floor and Dr. Hall on the floor above; there were telephone extensions on both floors. The phone kept ringing, and Mrs. Hall picked up the downstairs receiver; when she heard her husband's voice say "Hello" she immediately replaced it and heard no part of the ensuing conversation.

Louise Geist Riehl, Mrs. Hall's former maid, remembered the late-afternoon phone call. She was near the upstairs extension and overheard part of Dr. Hall's end of the conversation; as nearly as she could remember, it went something like this: "Yes, yes, yes. That's too bad. I'm going down to the church a little later. Can't we make arrangements for later, say about a quarter to eight?"

Mrs. Riehl saw Dr. Hall when he left the house between 7:30 and 7:40 and heard him tell Mrs. Hall he was going out for a while to see about Mrs. Mills's bill. Mrs. Hall asked him if he would be out late, and he answered, "No."

The witness gave Mrs. Hall at least a partial alibi for the night of the fourteenth. She swore positively that between 9:30 and 10:00 she saw Mrs. Hall in the library of her home playing solitaire. She told, too, of a conversation with Mrs. Hall immediately after breakfast on Friday. Mrs. Hall's eyes "were red with weeping," and she said, "Louise, Mr. Hall has not come home all night, I don't know where he is."

She had another conversation with Mrs. Hall about 7:30 Friday evening. Then Mrs. Hall said, "I thought he would come home tonight. I know he must be dead or he would have communicated with me."

Prosecutor Simpson tried to get Mrs. Riehl to change some of her statements. It was a vain effort. She continued positive in the testimony she had given. She denied ever having made any out-of-court statements to the contrary and swore that neither Di Martini nor anyone else had given her money or attempted to influence her testimony.

Barbara Tough, another maid in the Hall household called by the prosecution, proved an equally good witness for the defense. Thursday was her day off. She had returned to the Hall residence about 10:00 P.M. and seen lights in the first-floor library, lower hall and kitchen and on the second floor. She entered through the kitchen and went up to her room on the third floor, encountering no one. About two o'clock in the morning she heard Mrs. Hall walk to the bathroom and back. At 9:15 in the morning she saw Mrs. Hall in Willie's room, and Mrs. Hall said to her, "Oh, Barbara, Dr. Hall has not been home all night." "So the girls tell me," Miss Tough replied.

The witness said that Mrs. Hall did not speak to her again until about 7:30 in the evening. Then she said, "Oh, Barbara, where is Dr. Hall?" and went to her room. Shortly after that Miss Tough heard Mrs. Hall speaking to Miss Storer, the church organist, on the telephone, saying, "Oh, Agnes, Mr. Hall won't be down to choir practice tonight, he is out of town."

Miss Agnes Storer, the church organist, corroborated Miss Tough's account of the telephone call Mrs. Hall made to her on Friday evening.

Three witnesses, two of them newspaper reporters, testified they attended the funeral of Dr. Hall on Monday, September 18, and particularly noticed that Mrs. Hall had a fresh scratch an inch and a half or two inches long on the left side of her face.

Notwithstanding that Mrs. Anna K. Bearman was a first cousin of Mrs. Hall and one of her most ardent partisans, Senator Simpson put her on the stand as a State's witness. From her he brought out that on September 20 or possibly a day or two later Mrs. Hall gave her a tan coat and scarf and told her to send them to an establishment in Philadelphia to be dyed black. The witness said she did as directed. The parcel was delivered and receipted for in Mrs. Hall's name. Before she sent it away Mrs. Bearman examined the coat carefully. She was positive there were no spots or stains on it.

The Testimony of Jane Easton, alias Jane Gibson

It was known, of course, from the commencement of the trial that Jane Easton, alias Jane Gibson, would be the State's star witness. At the time of the trial she was a very sick woman, in the last stages of cancer.

On November 18 she was transported by ambulance from a Jersey City hospital to the courthouse in Somerville, carried on a stretcher into the courtroom and there transferred to a narrow, adjustable hospital bed placed in front of the jury box. She solemnly swore to tell the truth. A nurse and a doctor were in attendance during her entire examination. At their direction it was frequently halted that they might check the condition of the patient and give her necessary attention.

The "pig woman" presented a pitiful picture as she lay propped up in the little bed and endeavored to answer the barrage of questions which the lawyers put to her. Newspaper characterizations stated that "her face was as waxen as her coverlets," "her gray-streaked hair disordered," "her body emaciated," "her cheeks sunken" and "her hands thin and veined."

She told her story in a voice which for the larger part was scarcely audible. Most of her answers had to be repeated by the court reporters who sat as close to her as conditions would permit.

The sum of her direct examination was this: She ran a sixty-acre farm adjacent to Hamilton Street and about a mile and a half southwest of Easton Avenue. Twenty-three acres of it she had planted to corn. On the Monday before the murder someone had got into her field and stolen some of her crop. On Thursday the fourteenth between 8:00 and 9:00 in the evening she heard her dog bark. She listened and heard and then saw a "rickety wagon" moving down the middle of her cornfield. She went to the barn, saddled her mule "Jenny" and started on the road toward Easton Avenue. When she reached Easton, she turned northwest in the direction of De

Russey's Lane, following the noise of the wagon as it rattled along the street.

As she approached De Russey's Lane her mule brayed, so she slowed up in order not to let the supposed thieves know she was following them. She saw the wagon turn off Easton Avenue and at the same moment noticed a parked automobile in De Russey's Lane. There were two people in it—a white woman and a colored man. She saw the woman's face and did not recognize her, but later found out it was Mrs. Hall. The man was Willie Stevens. (He was so dark-skinned she mistook him for a Negro.) The couple did not get out of the auto, and she stayed on her mule. For some little time she watched and listened for the wagon, but could neither see nor hear it. Then she went a short way down De Russey's Lane, got off her mule, tied it to "two little cedar trees" and walked in the field alongside the lane. She walked until she came to "a big cedar tree" and then became aware of mumbling voices to her left—men's and women's voices. She stood still. The voices seemed to be coming toward her. The men were talking, and she heard a woman's voice, speaking "very quick-like," say, "Explain these letters." Then a man said, "G. D. it," and more of "that kind of stuff"—the witness said she would not repeat the exact words. Then she heard somebody "hitting, hitting, hitting" and "could hear somebody's wind going out." Someone said, "Ugh," and someone said, "G. D. it, let go." She heard a man holler, and then someone threw a flash toward where the two men were standing. They were wrestling together.

In the flash of the light she saw the faces of two men. One of them was Henry Stevens. She did not then see William Stevens. The light went out, and she heard a shot and something heavy fall. There were two women present, one of them "spoke easy" and said, "Oh, my!" The other woman "was screaming, screaming, screaming." The witness started to run toward her mule. Just as she got her foot in the stirrup she heard three more shots. She drove the mule home on a run. When she put up the mule in the barn she

noticed she had lost one of her moccasins. She went into the house and stayed for a few minutes and then decided to go back and look for the missing moccasin. Again she saddled the mule and started forth. As she neared the place where she had witnessed the events above recorded she "heard a sound like that of a screech owl" and then the voice of a man. The moon was now shining brightly, and she "looked right at the cedar tree and saw a big, gray-haired woman bending down and facing something and crying." It was the same woman she had seen before—Mrs. Hall.

The witness identified a picture of Defense Detective Felix Di Martini and testified that, shortly after she first told her story to the Somerset County prosecutor, Di Martini came to her house and told her in a threatening manner that she had better keep her mouth shut and stay out of the Hall case.

The direct examination closed with Mrs. Gibson's positive identification in court of Mrs. Hall and Henry and William Stevens as the persons she had seen in the neighborhood of De Russey's Lane on the night of September 14, 1922.

Much of General McCarter's long cross-examination concerned statements Mrs. Gibson was alleged to have made to police officers and others which were at variance with her sworn testimony. Most of these she either denied making or said she did not remember making.

She admitted exhibiting herself and her mule at a carnival fair in New York. It was a charity affair for the Marines, and she did not get anything out of it except her transportation. She denied ever having received a dollar from any newspaper.

General McCarter went into her personal history. She was known as Jane Easton, Mary Jane Easton and Jane Gibson—most commonly the last. Her maiden name was Einsleitner, but as a girl she had used the name Leitner. She denied ever having known a man named Harry Ray or a man named "Stumpy" Gillan or that she had ever "lived with them." She admitted knowing a man named Kesselring, but denied having ever lived with him as his wife.

She had never owned a pistol, but was familiar with the use of firearms. When she left the house on the night of September 14 to follow the corn thieves she took no weapon of any kind with her.

McCarter had her repeat the story she had told on direct examination as to her movements from the time she left her house between eight and nine o'clock until she finally returned for the night. There was little, if any, variation, but under specific questioning she added some details. It was pitch-dark when she first started out. De Russey's Lane was a long way from her house, and she had never been there before. The noises she heard of "mumbling, quarreling, cursing, and hammering" began farther off and traveled toward her and "went on for ten or fifteen minutes." She did not distinguish anyone until the flash was thrown on them. She could not see who held the flash. She saw "three or four people," but could not be certain whether there were three or four. The moon came up after eleven—a full moon. She went back for her moccasin because the pair had been a present to her and she was fond of them. She never found the missing one.

Mrs. Gibson did not learn of the murders until two weeks after they happened. Although she read in the paper the following Sunday that two people had been murdered on the outskirts of New Brunswick, she did not connect the story with what she had heard and seen the previous Thursday. She did not tell anybody about what she had witnessed and would never have spoken about it, had it not been for the false arrest of young Hayes.

Mrs. Gibson's story was corroborated to an extent by James Mills, who swore that she came to his house about two weeks after the murders and told him what she had seen. Another supporting witness was Robert Earling, a New Brunswick millwright, who testified that he knew Mrs. Gibson well. He had been in a parked automobile in De Russey's Lane on the fourteenth of September from the time it became dark until about eleven. After he had been there

about an hour and a half he saw her come along riding her mule and stop at Easton Avenue and De Russey's Lane.

General McCarter, in a vicious cross-examination, developed, over Earling's protest, that his traveling companion was a young girl named Jennie Lemford and that, although they had been together since early morning, they stayed in De Russey's Lane until eleven o'clock at night. Earling said he heard no shots, but did hear what sounded like a rickety wagon. And in the neighborhood of Easton Avenue and De Russey's Lane he saw two parked automobiles—one a sedan and the other a large touring car. Both cars had their lights out, and he could not tell whether or not they were occupied. He did not tell his story to anyone until nearly two years after the murders. He had no remembrance of telling a man named Staub that there was money in it for him if he would swear that he (Staub) had been in the neighborhood of De Russey's Lane on the night of September 14, 1922.

It was also developed that at the preliminary hearing Earling said the sedan he saw parked at Easton Avenue and De Russey's Lane was a Ford.

Skilled and experienced prosecutors try, whenever possible, to finish the presentation of their case on a high, clear note. In the Hall-Mills case the finishing note was distinctly sour.

Barbara Tough, the Hall's maid, was recalled and testified that Willie Stevens had no razor; "he shaved downtown." Dr. Hall, she said, had "an old-fashioned type razor" which he used regularly. It was kept in the medicine cabinet in the bathroom. Mr. Simpson, from his numerous exhibits, produced a razor and asked Miss Tough if she could identify it as Dr. Hall's razor. The girl took it in her hand, examined it carefully and replied that it was not Dr. Hall's razor; the one he used was much smaller.

Simpson next called a private detective named Caprio who had worked on the case for a short time under Prosecutor Beekman. Simpson showed him the razor previously shown to Miss Tough and asked what he knew about it. Caprio testified that it had been given to him by Beekman in Decem-

ber 1922. On this utterly inadequate showing Simpson offered the razor in evidence.

General McCarter demanded and was accorded the right to cross-examine before the Court ruled. With sharp and devastating questions McCarter quickly elicited the facts that the witness had served prison terms for false pretenses and extortion and, before the trial, had tried to sell McCarter the razor in question. Failing in the effort, he had turned the razor over to Simpson.

Simpson withdrew his offer of the razor, and this ended the prosecution's attempt to identify that or any other knife or gun as a murder weapon. This sensational breakdown in proof came as the last act in the presentation of the State's case.

Senator Case's opening statement for the defense was mildly spoken, sincere and undramatic. All the defendants, he said, would take the stand in their own defense. He outlined their testimony. Each of them would deny any complicity in the murders or any knowledge of them. The stories told by the Hoags, the Dicksons, Garvin, Dickman, Mrs. Demarest and the "pig woman" would be completely disproved. The finger-print evidence was all "Hocus-pocus." Its worthlessness would be demonstrated by *real* experts.

In addition to the three defendants the defense called seventy-four witnesses. In striking contrast to the presentation of the State's haphazard mixture of unrelated testimonies, the defense called its witnesses in a logical and related order. First it presented the testimony of Henry Stevens and all the evidence to support his alibi, next the evidence supporting William Stevens' denial of complicity in the murders and, finally, the testimony of Mrs. Hall with every available item of corroboration. With the same technique of cumulating and combining evidence for major emphasis, witnesses were called consecutively to destroy the story told by Mrs. Gibson and to destroy her as a witness worthy of credence.

Moreover, the defense knew its witnesses and knew exactly

what they would testify. No hostile witnesses were called. Each person who took the stand was a willing witness with a story to tell which would help one or another of the defendants. The able and painstaking counsel for the defense were never "surprised."

The Defense of Henry Stevens

Henry Stevens was the first of the three defendants to take the stand. Contemporary newspaper accounts picture him as a compact, heavy-set, spectacled man of medium height with a heavy mustache and thick, flat iron-gray hair. His two months' jail confinement had not completely erased from his face its natural outdoor ruddiness. Throughout his long examination—whether under easy direct examination or rough cross-examination—his face never lost its set severity or showed the slightest embarrassment or emotion. It was remarked that the jurors showed new life and gave stricter attention to his testimony than they had given to that of any previous witness.

He was fifty-seven years old and had lived in New Brunswick from the time he was four until 1900, when he married. From 1901 to 1915 he lived in Roselle Park and Rahway, New Jersey, and in 1915 bought a house and settled in Lavallette. From 1901 until 1922 he maintained also an apartment in New York. Before his retirement in 1920 he had worked as an advertising man, salesman and demonstrator for the Remington Arms and Du Pont companies. He was an expert shotgun trap shot and, as part of his employment, gave public exhibitions of his skill. While he was familiar with the Remington line of pistols and had sold them, he had never used a pistol to any extent and for many years prior to 1922 had not even owned one.

In 1922 he owned and drove a Ford station wagon. When he visited his sister in New Brunswick—which was seldom after his mother's death in 1919—he usually took the train.

His relations with his sister and the Reverend Mr. Hall had always been pleasant.

His detailed testimony as to his associations and actions on September 14, 1922, and the days immediately following covers many typewritten pages, but may be thus summarized:

He was at Lavallette all day Thursday the fourteenth. His wife was in New York. He fished in the surf for bluefish in the afternoon, had supper at 6:00 P.M. and after supper went to the house of a neighbor—Eger—and left word that the fish were biting. Then he returned to the beach to fish. About dusk another neighbor—Applegate—came along, bringing a large bluefish he had caught. Stevens weighed it for him on a fish scale and found it weighed six pounds. Stevens returned to his fishing, and after a little while Eger came out and joined him. Together they fished until nine o'clock. Stevens caught three "blues," which he took to his house, cleaned and put on ice before returning to the beach for more fishing. He stayed there until about ten o'clock, when the fish stopped biting. He dropped in at Eger's for a soft drink and after a few minutes went to his own home, where he read the paper for a while and then went out to his garage. In the near-by Wilson cottage he saw a light, so he called in to offer them a couple of bluefish and to confirm an arrangement previously made to drive Mrs. Wilson and her two young daughters the next day to Point Pleasant and put them and their baggage on an outbound train.

The next morning he rose at sunrise, prepared his breakfast and went downtown for a newspaper. Back home, he packed the fish for Mrs. Wilson. About eleven he had lunch and shortly after twelve drove Mrs. Wilson and the two girls to Point Pleasant and saw them off on the train. He returned to Lavallette in the late afternoon and went to the beach and fished until suppertime. After supper he visited awhile with the Egers, then went home and to bed about eleven.

He arose Saturday morning about 6:30, prepared his breakfast and went downtown for his morning paper. He had given the Egers a four-pound bluefish caught the night before. Mrs.

Eger cooked it, and he had dinner with them. Afterward he and Eger went to the beach and fished. Late in the afternoon he received a telegram from his cousin Edward Carpender which read: EDWARD HALL HAS BEEN KILLED. COME AT ONCE TO MY HOUSE.

Stevens gathered up and put away his fishing tackle and caught the first train for New Brunswick. He was met at the station by Edward Carpender and had supper with him at his house. After supper they both went across the street to see Mrs. Hall. There were no scratches on her face. Stevens spent the night with his cousin, but practically all of Sunday with Mrs. Hall. Late Sunday evening he left for New York, but returned to New Brunswick early Monday morning with his wife to attend the funeral. He and Mrs. Stevens left the funeral party at the subway station in Brooklyn and went to their New York apartment. They returned to Lavallette the following Thursday.

Stevens produced what he called his "fishing diary," in which he said it was his habit to make an entry of every fish he caught and the larger ones his neighbors caught. Under the date of September 14 it listed the catching and the weighing of Applegate's six-pound bluefish.

He swore he had never known or seen Eleanor Mills.

He denied he was in New Brunswick at any time on either the fourteenth or fifteenth of September and said he never laid eyes on Mrs. Demarest until he saw her on the witness stand.

He denied the testimony of Mr. and Mrs. Hoag. He had never before seen either one of them and had never been to their house.

He denied ever having been interviewed by ex-Trooper Dickman. During February 1923, when Dickman claimed to have interviewed him, he and his wife were in Florida and Cuba. They did not return to New York until the end of March.

He denied he was at or near De Russey's Lane at any time on September 14 or 15 or that he had ever been at the murder

scene. He declared emphatically he had never seen either Gorsline or Soper until long after the murders.

He denied emphatically that directly or indirectly he had participated in or had any knowledge whatever of the murder of Mrs. Mills and Dr. Hall.

Senator Simpson commenced his cross-examination of Henry Stevens with a smear: Wasn't Willie Stevens a mulatto? How else could one account for his dark skin and features? Henry Stevens answered quietly that William Stevens was his full brother and as white as himself.

The special prosecutor spent a lot of time without result endeavoring to make the witness admit that he was an expert in revolvers and revolver ammunition and revolver shooting. He examined the witness closely about his diary also. Why was there no entry in the book about the murders or the funeral? Stevens repeated his explanation that the record was not intended to be one of general events, but a "hunting and fishing diary."

Simpson asked a great many questions about alleged statements made by Stevens out of court. Some of these Stevens admitted, others he denied. He admitted having told Captain Walsh that he weighed Applegate's bluefish at 7:30. At the same time he had said nothing about having walked home with Eger—he had not thought it important.

Some of Simpson's final questions reached the acme of brutality. He produced a knife and asked Stevens to show the jury exactly how he cleaned a bluefish. Unsuspecting, Stevens explained. Then Simpson, grabbing the anatomist's manikin which Dr. Schultz had used in illustrating his post-mortem findings, asked the witness to take the knife and "make marks on this woman's throat just like you would in cleaning a bluefish." The witness said it could not be done.

Simpson followed with a series of sneering, rapid-fire questions: "So you were not there when the woman was shot?" "You weren't there when her throat was cut?" "You weren't there when her tongue and windpipe were pulled out?" To

all of these Henry Stevens, unperturbed, replied, "No, I was not."

Henry Stevens' neighbors—William H. Eger, a Washington real-estate dealer, and Arthur Applegate, a carpenter—corroborated his testimony in detail. On cross-examination Eger was compelled to admit that in a statement given to the investigating police he had stated that he was alone on the night of the fourteenth. It was a misunderstanding—he was now positive he and Henry Stevens had been together. Applegate denied that he had at any time doubted that he caught "the big blue" on Thursday the fourteenth and that Henry Stevens weighed it for him that night.

Eight other witnesses, all residents of Lavallette, testified to having seen Henry Stevens at the beach on September 14 at various times between 6:00 and 10:30 P.M. None of these was shaken by cross-examination. Two who had given earlier statements indicating they were not certain the date was September 14 now declared positively there could be no doubt about it—it was two days before the news concerning the murders broke.

Mrs. Wilson and her two daughters substantiated Henry Stevens' testimony that he called at their home at 10:30 on the night of the fourteenth and talked about the bluefish he was going to give them. The next day he gave them the fish and drove them to Point Pleasant. None of them was shaken by cross-examination.

Oliver C. Grinnell, a New York businessman, declared he saw Henry Stevens in Miami on February 16, 17 and 18, 1923.

Mrs. Emma Holzhohnen, a housewife living in Elizabeth, New Jersey, testified that in August 1924 she was visiting her daughter Mrs. John Tegan, who shared the Phillips farmhouse with Mr. and Mrs. Hoag. She saw the man who visited their house that month and to whom Mrs. Hoag talked. The man was not Henry Stevens.

Miss Agnes Storer, the church organist, again took the stand, this time to swear that on October 1, 1922, Ralph Gorsline was in the choir and attended all the church services

held that day. She produced the "choir attendance record" to prove it. (October 1, 1922, was the date Garvin had sworn Gorsline visited the Burns Detective Agency in New York to make the "confession" which implicated Henry Stevens.) Senator Simpson, in a lame attempt at facetiousness, inquired of the witness on cross-examination if, with her wonderful memory, she could recall any of the hymns Gorsline sang that day. Without hesitation the witness answered, "Yes, one of them was 'If You Love Me, Keep My Commandments.' " Even Henry Stevens joined in the general laughter that followed.

Sherman Burns, secretary of the Burns Detective Agency, swore that Garvin did not tell him Gorsline visited their New York office on October 1, 1922.

The Defense of William Stevens

The first witness called in William Stevens' behalf was Dr. Lawrence Runyon, the Halls' family physician. He testified that he had known William for thirty years and that he had never stuttered or suffered from epilepsy. (This was to refute the testimony of the prosecution's witnesses, Mr. and Mrs. Dickson.)

Senator Simpson brought out on the cross-examination of the doctor that, while William had not gone very far in school and might not be in all respects normal, he was brighter than a lot of people and "quite above the average"; he read "heavy engineering books" which many others might find quite beyond them. Dr. Runyon knew of William's interest in the fire department, but saw nothing of particular significance in it. He had not heard that William frequently started fires in his own back yard and then donned his fireman's helmet and handled the garden hose to put them out.

A New Brunswick haberdasher said he had known William for a great many years and sold him a number of hats. Never,

however, a derby—always a soft hat. (This was further refutation of the Dicksons' testimony.)

The warden of the Somerville jail, who had had William in custody since August 12, testified that he had never observed any signs of epilepsy in William and had never known him to stutter.

An expert photographer produced an enlarged photograph of the visiting-card fingerprint and the William Stevens specimen print and testified they were exact and undistorted enlargements of the smaller exhibits. The enlargements were to thirteen and a half diameters and measured two and a half by four feet.

The defense called three fingerprint experts: James H. Taylor, fingerprint expert in the United States Navy Department; Fred Sandberg, detective sergeant in the Identification Bureau, Metropolitan Police, Washington, D. C.; and Gerhardt Kuhner, fingerprint expert in the Central Bureau of Identification of the New York City Police Department. The qualifications of all three were impressive. All three, with demonstrations from the enlarged photographs, gave it as their positive and unqualified opinion that the print on the visiting card and the specimen print were not of the same person's fingers. They presented what they said were "seven positive differences." Mr. Taylor's testimony expressed the opinion of all three:

> And from these differences that I have pointed out there is absolutely no doubt that these fingerprints were not made by the same person: (1) a "short ridge" in one print and not in the other; (2) a well defined "dot" in one print, not in the other; (3) an "abrupt ending" in one print and not in the other; (4) another "abrupt ending" found only in one print; (5) a "peculiar bifurcation" in one, not present in the other; (6) in one area "two intervening lines," in the other corresponding area "four"; (7) in another area instead of a "bifurcation" a "straight line."

Simpson's cross-examinations of these witnesses did not weaken their direct testimony.

Ferd A. David, a Middlesex County detective, told of having picked up a number of Dr. Hall's visiting cards at the scene of the crime. He looked at them and saw no spots on any of them. He added, however, that he did not profess to be an expert.

After this background had been painted in, the defendant William Stevens took the stand. He was described by the press as a medium-sized man of "swarthy complexion" with "wiry, black hair" and a "thick, bushy, black mustache." He wore thick-lensed glasses which accentuated his bulging "pop" eyes. His speech was slow and precise, "as though he were attempting to overcome some natural impediment."

He was fifty-four years old, he said, had never had epilepsy, had never worn a derby hat and had never owned a gold watch and chain. His eyes were weak, and he had worn specially prescribed glasses since childhood. He had not been in or anywhere near the Dicksons' place in North Plainfield on September 14 or at any other time.

His relations with his brother-in-law had always been most cordial. He knew Mrs. Mills by sight.

For twenty or more years before September 1922 he had owned an Ivers-Johnson thirty-two-caliber revolver. He used it sometimes on the Fourth of July to fire blanks. The last time he had seen it was "in this courthouse in October last." The detectives had it. He did not know how or when they got it.

He returned from his vacation at Bay Head on Labor Day and between that time and September 14 noticed nothing out of the ordinary between his sister and Mr. Hall.

On the evening of the fourteenth he had supper at home with Mr. Hall, his sister and his niece Frances Voorhees. He noticed nothing unusual during the meal. After supper he went upstairs to his room to smoke and read. He came down after a few minutes and heard Hall say, "I don't really have to go out tonight, but I am going out to see about the payment of the bill for the operation." Then William went back to his room, read awhile and retired at his usual time—between 8:30 and 9:00.

In the early morning he was awakened by his sister knocking on his door. She said, "I want you to come down to the church with me. Edward has not been home, and I am very much worried." She told him it was 2:30. He described the route they took in walking to the church. When they got there they found it was dark, and his sister said, "We might as well go down and see if it might not be possible he [Hall] is at the Millses' house—there might be somebody sick there." They went to the Mills house. It, too, was dark. For two or three minutes they stood in front of it, then retraced their steps to the Hall home. They entered together by the side door. His sister told him there was nothing else they could do, so he went to bed.

He remembered nothing of what he did on Friday. On Saturday, sometime between 12:00 and 2:00, he saw his aunt Mrs. Charles J. Carpender "coming up the stairs, and she came in and said, 'You might as well know it, Edward has been shot.'" He dropped the paper he was reading and put his head down and cried.

He did not look at the body at the undertaker's. They told him it was not in condition to be seen.

He had given many statements to the police—"every time they asked for one."

He denied with great seriousness and emphasis that he had had anything to do with the murders or knew anything at all about them.

Simpson's cross-examination was largely a retracing of the direct. William was confronted with a number of allegedly conflicting earlier statements He was unperturbed by the attempted impeachment. Maybe he had said he was awakened at 1:30. He had no recollection of telling the prosecutor he had said to one of the men at the fire station Saturday morning that "something was wrong in his home." He did not remember saying to Louise Riehl on Friday morning, "Something terrible has happened, but don't tell her [Mrs. Hall] that I told you."

Before the murders he did not know where De Russey's

Lane was. Since then the police had taken him there and pointed out the apple orchard and the Parker House.

He denied positively that he was with his sister in an automobile on Easton Avenue on the evening of September 14 and that he saw a woman ride by on a mule.

The first time he ever saw the minister's visiting card was "here in the courtroom." He indignantly denied that after Hall was dead he picked up one of his visting cards between his thumb and forefinger and set it up in the grass at the foot of the body. He denied he had ever been confronted in the prosecutor's office with Mrs. Gibson.

He had seldom seen Mrs. Mills. He remembered one occasion when he went to the Mills home to see Mr. Mills about some window boxes he was making for Mrs. Hall, and another when his sister sent him over one Christmas morning to deliver a present for Mrs. Mills.

To the surprise of many—including the special prosecutor who had counted heavily on the "breaks" the supposed mental weakling would make—Willie Stevens made a remarkably good witness. One wonders about the extent to which this had been made possible by the skillful pretrial preparation of the seven-man legal phalanx which directed the defense.

The Defense Evidence To Discredit Jane Gibson

Professor Raymond Smith Dugan of Princeton University's Department of Astronomy swore that on the night of September 14, 1922, the moon did not rise until 11:23 and was a little less than a half-moon.

Mrs. Jennie Wahler (nee Jennie Lemford), who Prosecution's Witness Earling had said was his companion on the night of the murders, admitted she was out driving with Earling, but denied that the car was ever parked in De Russey's Lane.

William Staub of New Brunswick swore he was well acquainted with Earling and that in early August 1926 he had

had a conversation with him about the case. Earling had said to him, "If you will say you were out in De Russey's Lane on the night of September 14, 1922, you can get some money out of it."

Captain Mason of the Essex County Detective Bureau testified that in the course of his work on the case he met Jane Gibson and she told him that the two men she had seen in the prosecutor's office (Henry and William Stevens) were not the men she had seen in De Russey's Lane.

Ferd A. David, a Middlesex County detective, related a conversation with Mrs. Gibson on October 17, 1922, when William and Henry Stevens and Mrs. Hall were in the prosecutor's office. She said she could not identify any of them. He admitted under cross-examination that he had testified before the grand jury on November 28, 1922, that Mrs. Gibson had identified Henry Stevens. The inconsistency was not explained.

Bogert T. Conklin, a former sheriff of Somerset County, testified to a conversation with Mrs. Gibson in June 1923. "Jane, do you honestly think the Stevens family had anything to do with the murders?" he asked. She answered, "No."

George N. Sippel, a Middlebush, New Jersey, farmer, acknowledged a "slight acquaintance" with Mrs. Gibson and stated he had a conversation with her the week before the grand jury convened in 1922. In this conversation she told him she would like to have him testify that on the night of the murders he was driving home on Easton Avenue from New Brunswick and when he came to De Russey's Lane he decided to cross over to Hamilton Street; that after going a short distance in De Russey's Lane he saw a parked car on the left side of the road with two men and a woman in it, whom he was unable to identify, and that a short distance farther on he noticed a woman riding a horse or a mule.

Di Martini contradicted Mrs. Gibson's testimony that he had called on her and threatened her.

Arthur Carbine, a Mount Holly detective, said that early in 1923 he and Detective Ellis Parker visited Mrs. Gibson

and she told them she had received over $700 from "the newspapers."

Twelve witnesses, several of them persons of considerable prominence in New Brunswick and Somerville, took the stand and swore they knew Mrs. Gibson and her reputation for truth and veracity was bad.

General Testimony

Mrs. Mabel Glickner, a daughter of Prosecution's Witness Marie Demarest, testified she was in the automobile with her mother on the occasion the latter had described. It was in May or June 1922. They drove along and through Buccleuch Park, but Mrs. Glickner did not see Mrs. Mills and Dr. Hall sitting on one of the park benches, nor did she see Gorsline and Mrs. Minna Clarke standing by the roadside.

Two women—Mrs. Edwards and Mrs. Stryker—who lived near the murder scene said that Raymond Schneider and Pearl Bahmer came to the Stryker home on Saturday morning the sixteenth and reported the finding of the bodies. Mrs. Edwards telephoned the Somerset County police.

H. A. Langbein of Franklin Park, New Jersey, testified he was in the car with Elijah Soper on the night of September 14, but did not see any car parked in or near De Russey's Lane with two men and a woman in it.

Defense Detective Di Martini testified he had never seen or talked to Marie Demarest and denied specifically her statement that he had attempted to bribe her. Di Martini was subjected to a long cross-examination concerning his employment and activities in the case. He admitted he had been paid something over $5,000 for his services and expenses. (When Di Martini left the stand and started from the courtroom he was arrested on a warrant which charged him with having been an accessory after the fact to the Hall and Mills murders. He promptly made bail in the sum of $3,000 and was released.)

A court stenographer who had taken shorthand notes of Ellis Parker's interview with James Mills testified that the latter had said, "She [Mrs. Mills] said something about jealousy over Mr. Hall and that I made a hell of a house for her."

The Defense of Mrs. Hall

To meet the charge in Senator Simpson's opening statement that Mrs. Hall had not "acted like a woman distressed by the absence of a cherished husband" on the Friday and Saturday before his dead body was found, the defense called five witnesses who testified they saw Mrs. Hall during this period. They agreed that she was "terribly distressed," "terribly agitated," "very, very unhappy," and that "she broke down and cried."

Five witnesses, two of them Episcopal clergymen, testified they saw Mrs. Hall on Monday, the day of Dr. Hall's funeral, and there were no scratches on her face.

An architect familiar with the construction of the Hall home said the door the milkman had seen open in the early morning of the fifteenth was the door to an outside closet and did not lead into the house.

Edward R. Carpender, cousin of Mrs. Hall, testified that he called on Mrs. Hall Saturday morning before the finding of the bodies had been reported, and after they had learned of the doctor's death he, at Mrs. Hall's direction, made all the arrangements for the funeral. He denied vigorously that he told Undertaker Hubbard or Dr. Cronk to cut into Mrs. Mills's abdomen to determine whether or not she was pregnant.

William E. Florance, a New Brunswick lawyer, testified he was called by Mrs. Hall on Friday afternoon and told of her husband's disappearance. He immediately notified the police and thereafter kept in touch with them; he learned of the finding of the bodies around noon Saturday from someone in the office of the *Home News*. He denied ever having had

any conversation with Dr. Cronk about cutting into Mrs. Mills's abdomen.

Two witnesses, one a friend of Mrs. Bearman and the other a relative of Mrs. Hall, swore they had seen the coat and scarf Mrs. Hall gave to Mrs. Bearman to send to Philadelphia to have dyed. There had been no spots or stains on the garments.

Henry Stevens and William Stevens had made good witnesses. It remained, however, for the one at whom the accusing fingers had been most directly pointed—the fifty-two-year-old widow of the murdered minister—to provide one of the most amazing spectacles of unruffled composure and alertness under supreme stress that has ever been seen in an American courtroom.

Contemporary press accounts describe "a figure in black, with a strand of graying hair straying from beneath her hat" who "went on the witness stand with a smile on her lips" which "when she stepped down after two hours was still there." Newspapermen wrote of a "voice softly modulated" which "uttered simple words which told a story that carried conviction to every listener" and of a "great, strong figure which, like a rock, withstood every assault that was made upon it."

This was the sum of her testimony:

She was born in Aiken, South Carolina, in 1874 and was brought to New Brunswick as a baby. She had known no other home. Before her marriage and before she met Edward Hall she had taught a Sunday-school class at St. John's. It was through her work in the church and the Sunday school that she met Dr. Hall. He was seven years her junior, but they fell in love and on July 20, 1911, were married. From that time until the tragedy they lived happily together in the Nichol Avenue home.

William had always lived with her. Her brother Henry had left New Brunswick when he married in 1900. The relations between her and Henry and between Henry and William and her husband had always been pleasant and affectionate.

In 1922 she owned two automobiles—a Dodge sedan and a Case open touring car. She and her husband drove both of them. William did not drive.

She assisted her husband in his church work, teaching in the Sunday school and attending the church services and social functions. She knew Mrs. Mills was a zealous church worker. At one time Mrs. Mills was a member of her Sunday-school class. During Mrs. Mills's illness in the early part of 1922 Mrs. Hall drove her to the hospital and frequently called on her while she was convalescing. Mrs. Hall paid all the hospital bills—exclusive of the doctor's operating charge —and drove Mrs. Mills home when she was able to leave.

Mrs. Hall described the vacation trip she and her husband made to Ilesford, Maine, in the summer of 1922. They had a very happy holiday. She knew her husband received letters from Mrs. Mills; he showed them to her. They were formal letters which concerned church services and flower arrangements. She herself received two or three friendly letters from Mrs. Mills while they were in Maine. While they were away William was at Bay Head, New Jersey, and because she did not want to leave the New Brunswick house unattended she engaged James Mills to watch it and sleep there nights.

The Halls left Ilesford late in August. She was not sure that she saw Mrs. Mills between Labor Day, when she returned to New Brunswick, and September 13, but on that day she and Dr. Hall went with Dr. Hall's mother and Mrs. Mills and Mrs. Minna Clarke on an all-day picnic to Lake Hopatcong. Mrs. Hall took them in her Case touring car. They returned about nine in the evening, and she drove Mrs. Mills and Mrs. Clarke to their homes. At no time during the day did she detect anything unusual in her husband's conduct toward Mrs. Mills. Nor, said Mrs. Hall, was there any change in his uniformly affectionate treatment of her. When they reached home after the picnic they found that the doctor's nine-year-old niece, Frances Voorhees, had arrived.

Mrs. Hall described her own and her husband's movements on Thursday. He came home during the afternoon and took

little Frances and one of her companions for an automobile ride. While he was gone there was a telephone call which Mrs. Hall answered. The caller was Mrs. Mills, who asked for the doctor. When told he was not there, she left a message that there was something about the hospital bill she did not understand and she wanted Dr. Hall to explain it to her.

Dr. Hall came home about 6:30 P.M. and Mrs. Hall gave him Mrs. Mills's message. The Halls had supper together, and there was nothing unusual in the rector's manner. He was gay with both his wife and his niece.

After supper Mrs. Hall sat on the porch, and Dr. Hall went upstairs. She heard the telephone ring and went inside the house and picked up the downstairs receiver. As she did so she heard either Dr. Hall or Louise Geist (Riehl) speaking. Immediately she put her receiver down, without learning who was calling. She heard no part of the conversation.

While she was sitting at a table in the library playing a game with Frances, Dr. Hall came in and said he was going out to see about the bill. It was between 7:00 and 7:30 when he left. His manner was "perfectly natural."

At nine o'clock she put the little girl to bed and sat in the library. Dr. Hall had a study in the church and frequently worked there as late as ten o'clock. She heard Barbara Tough come in, but did not see her. William had gone to his room immediately after supper.

She sat up until after eleven, waiting for her husband to come home. Then she undressed and went to bed, but could not sleep. About 2:30 she got up and dressed, called William, told him Edward had not come home and asked him to get up and go to the church with her. She thought maybe the doctor had fallen asleep. Before leaving the house she put on a long gray coat. This was not the coat that was later sent out to be dyed. The coat she wore—the gray one—was taken by the prosecutors, and, so far as she knew, they still had it.

She described the route they took to the church, thence to the Mills home and back to her own home. Her testimony agreed exactly with that of her brother William. They

entered the house together, and she told William to go to bed. As for herself, she undressed but could not sleep.

The next morning she called the police and asked if they had a record of any casualties. They said, "No."

Either before or just after breakfast she went to the church and there encountered James Mills. She asked him if there had been any sickness at his house, and he said, "No." She then said to him, "Did Dr. Hall say where he was going when he went to your house last night?" Mills said he did not know Mr. Hall had been there. She said, "Well, he has not been home all night," and Mills replied, "My wife has been away all night. Maybe they have gone to Coney Island." This struck Mrs. Hall as a foolish remark. She did not remember Mills's saying, "Perhaps they have eloped."

Later in the morning she telephoned Dr. Hall's sister, Mrs. Voorhees, and shortly after noon both she and Dr. Hall's other sister, Mrs. Bonner, arrived. They stayed with her until early evening. About noon she went to Mills's house and asked him if he had heard anything, and he said, "No." She made the same inquiry of Mills late in the afternoon. He had heard nothing.

In the afternoon she telephoned Attorney Florance and directed him to notify the police of Dr. Hall's absence and keep in touch with them. In the evening she called up Miss Storer, the church organist, and told her Dr. Hall would not be at choir practice; he was away from home.

Saturday morning she telephoned her cousin Edward Carpender and told him of her husband's disappearance. He and his wife came over immediately. She also called the Reverend Dr. Conover, who came in during the early afternoon. It was about one o'clock when she learned of the finding of the bodies. The family talked over the funeral arrangements, and she commissioned Edward Carpender to attend to them. She asked if the body could be brought home and was told by someone—either the undertaker or Edward Carpender—that it would be inadvisable.

Mrs. Hall made a positive general denial of any participa-

tion in or knowledge of the murders. She denied emphatically that she was in or near De Russey's Lane or the Phillips farm on the night of the fourteenth. There were no scratches on her face on Friday, Saturday, Sunday or Monday following the murders. She denied ever having seen her husband's diary or the love letters which had passed between her husband and Mrs. Mills. Never had Dr. Hall indicated to her by word or action that his affection for her had altered; she had never had reason to regard the relationship between the doctor and Mrs. Mills as anything more than the natural relationship of a pastor and one of his earnest and helpful parishioners.

She withheld nothing from Prosecutor Beekman and Detective Totten when they called to interview her on Sunday morning; she talked to them freely and answered all their questions. When they said they had information that a woman had been seen entering the Hall home in the early morning of the fifteenth she replied at once that she was the woman and told of her and William's visit to the church and the Mills home in search of Dr. Hall. She offered no objection to the officers' going through all her husband's effects and removing such objects as they desired. She never heard of Di Martini offering money to Mrs. Demarest or anyone else. During the first investigation she tendered the prosecution her bankbooks and records. She appeared at the prosecutor's office whenever she was summoned and repeatedly submitted to examination. She solicited but was denied an opportunity to appear before the grand jury to tell her story. As to her alleged identification in the prosecutor's office by Mrs. Gibson, she had known that someone looked at her, but she did not know who it was. She had no recollection of ever having seen Mrs. Gibson before she was brought into the courtroom to testify.

There was nothing unusual about the coat-dyeing incident. She had sent clothes to the same establishment before for dyeing. One occasion she particularly remembered—it was

after her mother had died and she felt that for a time she wanted to wear mourning.

Mrs. Hall knew her brother William had a pistol. She did not know what kind it was, but she did remember that three years before the murders her husband, without William's knowledge, had filed down its firing pin so that it would not shoot. She had never seen William discharge the pistol and knew nothing of firearms herself. William's eyes had always been weak, and he had worn glasses since childhood. He had never stuttered or suffered from epilepsy. He had never owned a gold watch and chain.

Another note of mystery was injected into the case by Mrs. Hall's statement that her husband always wore "an old-fashioned hunting-case gold watch, held by a ribbon and fob" and carried a wallet which invariably contained a "considerable amount of paper money." And he always fastened his shirt cuffs with a pair of "solid gold cuff buttons." She had not seen watch, wallet or cuff buttons since Dr. Hall's death.

She concluded her direct testimony with the answer to a summary question that she had told the jury the truth, the whole truth and nothing but the truth. General McCarter then passed her to the prosecution for cross-examination.

Senator Simpson's questions were blunt and deliberately irritating, always weighted with sarcasm and contempt and often insolent and brutal. The principal result of the entire effort was a reiteration of the witness' direct testimony.

Many questions were directed to an attempt to prove that Mrs. Hall knew of the affair between her husband and Mrs. Mills. Mrs. Hall repeated that she had never suspected her husband of infidelity. She had always had complete confidence in him. He never stayed away from home all night. She saw nothing in the associations or actions of her husband and Mrs. Mills to arouse suspicion. She was not jealous of Mrs. Mills—knew of no reason to be. Again she denied knowledge before the murders of the doctor's diary and the love letters. "Her friend Minna Clarke" had never told her of the

liaison between Dr. Hall and Mrs. Mills or showed her some of Mrs. Mills's letters.

Simpson spent much time trying to make it appear that Mrs. Hall's attempts to find out what had happened to her husband were not the natural actions of an innocent and anxious wife. Why had she not called the hospitals? Had she not admitted that she feared he might have met with an automobile accident? Mrs. Hall answered that she did call the police, and she knew Dr. Hall was well known at all the hospitals and felt sure she would have been promptly informed if he had been taken to one of them. But, pursued Simpson, she called the police station only once and did not give her name. Yes, replied Mrs. Hall, but she had also asked her attorney Senator Florance to notify the police and to keep in touch with them.

The cross-examiner attempted to make something of the fact that she had not promptly notified her brother Henry of her husband's absence. She explained that she could not call him because he had no telephone. She notified Dr. Hall's sisters on Friday morning, which seemed the more natural and appropriate thing to do.

Simpson made other attempts to impeach the witness. Mrs. Hall said she did not remember telling the prosecutor that in her talk with James Mills on Friday the fifteenth she said, "They have met foul play, they were together and they are dead." She denied with positiveness that on a boat returning from Europe in 1925 she had said either to Miss Storer or to Mrs. Bonner (Dr. Hall's sister), "Well, we are getting home. I hope that pig woman is dead. I made only one mistake, that was when I sent the coat to Philadelphia to be dyed. I should have burned it."[10]

Senator Simpson did succeed in bolstering his claim that William Stevens was not entirely competent. Mrs. Hall admitted that her mother had set aside a trust fund for William, of which she and her brother Henry were trustees, and

[10] Mrs. Bonner took the stand after the examination of Mrs. Hall and denied emphatically that Mrs. Hall had ever made any such statement to her.

that "in certain respects it was regarded as essential that Willie be taken care of."

The special prosecutor's cross-examination closed with a series of blunt, harsh and accusing questions: Hadn't Mrs. Hall gone with Henry Stevens to the place of the murders and seen her husband killed before her eyes? Hadn't she been there when three bullets were fired into Mrs. Mills's head? Hadn't she seen the woman's throat cut and the inside of her throat torn out? To all of these Mrs. Hall, with her eyes squarely meeting those of the prosecutor, responded with a determined "No."

General McCarter demonstrated complete satisfaction with the manner in which Mrs. Hall had acquitted herself on cross-examination. His redirect was confined to a few clarifying questions and, after calling three witnesses whose testimony has already been sketched, announced that the defense "rested."

The State's Rebuttal

Senator Simpson presented nineteen witnesses in rebuttal. The first was an official court reporter who had taken down in shorthand the statements of Applegate and two others of Henry Stevens' alibi witnesses. She read questions and answers from her shorthand notes which indicated that when the statements were taken (September 1926) the witnesses were not certain that the date Applegate had caught and Henry Stevens had weighed "the big blue" was September 14. A reporter for a Philadelphia newspaper who was present at the same time added his testimony that Applegate had then said he was not certain as to the date.

Two handwriting experts testified that the four entries in Henry Stevens' fishing diary under the date September 14 had been made with three different lead pencils and that the second entry in order—"Art. One Blue. *6* Pounds"— had been written in after the third entry—"At Max's in aft"—had been made.

The State's three fingerprint experts who had previously testified were recalled to refute the testimony of the defense experts and reaffirm their opinions that the prints on the rector's visiting card and the specimen of William Stevens' fingerprints were identical.

Eight witnesses took the stand to swear that Mrs. Gibson's reputation for truth and veracity was good. All but one of these made the expected answers. The odd one—a Dr. Cooper—said "it was not so good . . . about 50-50."

Mrs. Demarest was recalled. She testified that she had gone to Brooklyn for the extradition hearing where the prosecution was trying to have Di Martini returned to Somerset County to stand trial on the charge that he was an accessory after the fact to the murders. While there she rode in the same elevator with Di Martini, and he greeted her with, "Hello, Mrs. Demarest." Three police officers and a newspaper reporter were sworn as witnesses and corroborated her.

Mrs. Barnhart (Mrs. Mills's sister) said that when Di Martini called to see her he told her that he had been to see Mrs. Gibson.

The surrebuttal of the defense was very brief—four witnesses. A well-known New York handwriting expert gave it as his opinion that, while the entries in Henry Stevens' fishing diary under the date September 14 apparently were written with different lead pencils, the second entry had been written *before* the third.

A defense fingerprint expert was recalled to refute the testimony of one of the prosecution's experts that the enlarged photograph of the disputed fingerprint on the minister's visiting card had been distorted in the enlarging process.

Two newspapermen testified they were in the same elevator in Brooklyn with Di Martini and Mrs. Demarest and did not hear Di Martini say, "Hello, Mrs. Demarest."

The defense rested at noon on December 1, 1926, and the Court ordered the attorneys to proceed with their summations.

General McCarter opened the argument for the defense and talked for nearly three hours. He was an advocate in the old tradition: intense, challenging, demonstrative, emotional and possessed of a well-trained voice that, at one moment, thundered so loud it could be readily heard by the crowds outside in the courthouse yard and, in the next, sank to a tearful, wheedling whisper that caused the jurors in the back row to lean forward in their seats to catch the muted words. His balanced sentences, studded with classical allusions and picturesque illustrations, built up to smashing climaxes, punctuated and enforced by appropriate and effective gestures.

Simpson he attacked as the "officious intermeddler" who had led an army of snoopers from Hudson County to interfere with the proper concerns of Somerset County, which four years earlier had reviewed all the evidence and held his clients blameless. "That army," said McCarter, "headed by Alexander Simpson, approached and captured this little town on the eighth of August last and, with the little corporal at its head, has been up through your streets every day since then for nearly four months. When I was in Princeton there was quite a popular hymn by Sankey which the students sang: "See the Mighty Host Advancing, Satan Leading On." The audience laughed uproariously. The jury appeared pleased. Judge Parker gaveled for order.

McCarter, with equally picturesque accompaniments, denounced the editor of the "vicious" New York tabloid, whom he named "a Mephistopheles." "Greasy Vest" Garvin "had been proved an unmitigated liar by reputable witnesses and the indisputable evidence of St. John's choir attendance record." "Dickman—the redoubtable Dickman," shouted McCarter, "fresh from Alcatraz prison in California. Here, under arrest with a man temporarily removing the shackles of imprisonment that he may appear as a respectable free person on the witness stand before a jury in Somerset County." All the prosecution's other adverse witnesses—the fingerprint experts, Mrs. Demarest, Mr. and Mrs. Dickson, Anna Hoag,

James Mills, Mrs. Gibson, Robert Earling—came in for a round measure of abuse.

McCarter did not directly charge Mills with the murder, but—what was probably more effective—he planted the seed of that suspicion:

I am not here to vindicate or to scold that dead couple. They have their account to make with their Maker. But I am here as a man with red blood in his veins to question the answer of a husband who placidly admits his wife to be absent for forty hours without raising a finger to find out where she is or what has happened to her, except to say to Mrs. Hall, "Perhaps they have eloped." Then after that news—and is it news?—is brought to him, he calmly sells to a newspaper the incriminating letters showing that she is an adulteress. And finally . . . on an evening within the first week after the tragedy was discovered, this Jane Gibson, alias Jane Easton, alias Jane "the pig woman," visited the Mills' house and spent the evening there, and then she becomes a witness; then she hears all these things and sees all these things. And then the chorus is formed to fasten this crime on the Hall family, and "the pig woman" looms on the scene.

McCarter's final note was persecution—"the foul and damnable persecution" of his innocent clients. "It lies with you gentlemen," said the tired and hoarse-voiced advocate, "to put an end to this persecution, to free this woman from the stigma of this heartless accusation, to let these law-abiding citizens, these defendants, realize that you at least are not of this motley crowd who, under the guise of ferreting out crime, are seeking and acquiring wealth and hoping to gain political ascendency."

McCarter was followed by Senator Case, whose argument lacked some of the picturesqueness of McCarter's but came much nearer the realities of the case. He devoted a considerable portion of his two-hour speech to the "pig woman" and an analysis of her testimony. Her story, he said, was "too grotesque" to be believed. He did not know why she had

told the tale she had. Possibly the opiates she had taken to alleviate the pains of the cancer she was dying from had affected her mind; or maybe she had a "disordered mind" or perhaps "a guilty conscience"; or "she might even have been the killer herself." Developing this last hazard, he argued how easy it would have been for Mrs. Gibson to slip up behind the trusting couple in her moccasins, "the Indian footwear that makes no noise." She might have shot the man and, when the woman screamed, have shot her and then cut her throat. He pictured the "pig woman" as "possessed of a kind of sadistic frenzy that would take satisfaction in promiscuous slaughter." He cited the testimony that the woman was familiar with firearms and concluded, "There is more to support the theory that Jane Gibson did these killings than there is against these three defendants."

Case offered a theory to account for the pastor's visiting card which had been found at the scene of the tragedy. He accused Raymond Schneider, who with his girl friend Pearl Bahmer was the first to discover the bodies, of rifling the pockets of the dead rector and stealing his watch and money. Schneider found the minister's cardcase and turned it inside out, looking for more money; in the process, a number of Dr. Hall's visiting cards fell on the ground. Case made much of the fact that the prosecution had not called Schneider as a witness. He had not been called, said Case, because Simpson knew the defense would show that he robbed the dead bodies before he reported his gruesome find to the police.

Case's defense of Mrs. Hall was dramatic. He walked over to where she sat and raised her gloved hand until it was in full view of the jury. "Gentlemen," cried Case, "as it was in the beginning, perhaps also at the end it might not be improper to say, 'Prisoner, look upon the jury; jury, look upon the prisoner.' Are you content that this hand shot the gun that killed these people; that this is the hand that severed the head from Mrs. Mills' body? Are you content to say that?"

It will be remembered that Mrs. Gibson had described

the woman she had seen in De Russey's Lane as "a big, gray-haired woman." After restating this testimony Case asked Mrs. Hall to stand. She was really a short woman—barely reaching Case's shoulder. Case pointed to her hair—only now, as he said, starting to turn gray. Then he wheeled to face the jury and made his point: Mrs. Hall was not "a big woman"; even now, four years after the event, she was not "a gray-haired woman"; at the time of the tragedy she was only forty-seven and her hair must have been black.

Case concluded his plea for Mrs. Hall with an impassioned cry: "Oh, gentlemen, this is a serious moment in your lives and hers. First, they take away her husband, then they take away the ideal she had of that husband, and now they are trying to take away her life. Don't let them do it, gentlemen. Don't let them do it."

The jury was plainly affected by Senator Case's plea. There were handkerchiefs at the eyes of many of the audience. Henry Stevens wept openly. Willie Stevens had lost his grin. Only Mrs. Hall remained impassive; her face held the same stern, fixed, expressionless look it had worn throughout the long and wearisome trial.

The last word for the defense had been spoken.

Senator Simpson summed up for the prosecution. No man ever faced a more difficult or thankless task.

Simpson knew that the jury—representative of the countryside of Somerset County—before hearing any argument had determined the case against him. He knew also that nothing short of a miracle could alter that determination. A less resolute man would have thrown up the sponge. Not Simpson. Whatever the jury's motivation—whether resentment at the "foreign prosecution," a feeling that Somerset County four years earlier had settled the matter or a satisfaction that the victims had received the just wages of death for their transgressions and a conviction that the paymaster, whoever it was, had been a divine instrument—Simpson determined to force the triers to face the facts that murder had been committed, that it was a jealousy and vengeance killing, that the

defendants had ample motive, and that the evidence, direct and circumstantial, linked them solidly to the crime.

In sharp contrast to defense counsel, he made no attempt to scale the heights of oratory. His manner was serious and sincere, his tone of voice quiet and conversational. In well-chosen, simple English, but with deadly emphasis, he reviewed the prosecution's evidence. He dissected and exposed the weaknesses of the defense's contentions.

Simpson's theory was that Mrs. Hall had discovered her husband's infidelity and was consumed with jealousy and mortification. She and her brothers and cousin learned of the tryst in Lovers' Lane and traced the couple there, not to commit murder, but to confront the rector and his paramour with the letters of Mrs. Mills which had come into Mrs. Hall's possession. When they arrived there, according to Simpson, a violent quarrel and struggle ensued. Someone had a revolver—Simpson did not profess to know who it was. In the struggle it was accidentally discharged, and Dr. Hall was killed. Then it became necessary for their self-preservation to kill Mrs. Mills, and Henry Stevens, a master of firearms, did that while Mrs. Hall, Willie Stevens and Henry Carpender stood by. Simpson did not suggest who it was that had cut the singer's throat and removed her tongue, larynx and upper windpipe, but he declared that Mrs. Hall knew and could tell if she wanted to.

The prosecutor defended Mrs. Gibson. She had risen from her deathbed to give testimony against the all-powerful Stevens-Carpender family. What possible motive had she to lie? He scoffed at the defense attempt to shift suspicion to her as the murderess. "They might as easily," said Simpson, "try to prove that the murders were committed by Jennie the mule."

Simpson had words of charity for the dead choir singer. "Who was this woman that was murdered? *There* she is," he said, picking up a photograph from a pile of exhibits on the trial table. "There she is. Just as much a human being as your wife or daughter, a nice-looking woman, the mother

of two children. The husband wasn't particularly inspirational, as I judge from his testimony on the stand. . . . And here," said Simpson, picking up another photograph, "is the church. She sang in the choir of this Episcopal church. There is the cross. A man preached in front of that cross. She sang there. And the man that preached was *this* man," he continued, picking up a picture of the dead rector, "a fine-looking man, a splendid-looking man, just the kind of man who would attract a woman whose heart was empty and hungry. She heard him preach his sermons, heard him read the Bible . . . heard him read the Psalms out of the Episcopal psalter. . . . Was it any wonder that this woman should come under the spell of this man?"

These remarks were in sharp contrast to Senator Simpson's strictures against Mrs. Hall, whom he scored as a proud, stern, cruel, cold-blooded and vindictive woman, given to ordering, through her wealth and power, her own and others' lives according to her desires.

At no time did the special prosecutor seek to curry favor with the jury. On the contrary, after presenting a particularly damning piece of evidence he frequently singled out a juror, called him by name and demanded, "How can *you* disregard *that* testimony?"

In his conclusion Simpson literally threw the gage at the jury.

The defense thinks it very stupid of me to antagonize you. Well, of course, if I were trying an automobile accident case I would pat you on the back and tell you what fine men you were, what a splendid county you came from, how intelligently you followed the evidence. But I am not trying to get in your good graces. I am not trying to win a case. I am speaking for the great State of New Jersey in this abominable murder. The challenge I put to you on your oath is: What do you say of the *evidence?* That is the challenge to you, the big challenge. We are not *pleading* for a verdict. We are not *smooching* for a verdict. . . . We are talking to you just as though you were going to take this evidence and decide this case right on the evidence.

No man, similarly positioned, ever made a more forthright speech. Whatever criticism might be urged against Senator Simpson, he fought the case through, according to his convictions, and to the bitter end.

The Court's charge was relatively brief and well-balanced. Judge Parker reviewed the evidence dispassionately and without comment other than that it was for the jury and the jury alone to find and determine the facts.

The jury retired at 1:45 P.M. After five hours' deliberation, it returned its verdict: Not guilty as to all defendants. It was learned that the jury had taken three ballots. On the first ballot they stood ten for acquittal, two for conviction; on the second, eleven for acquittal and one for conviction. The third was a unanimous vote for acquittal.

AFTERMATH

The day after the verdict was returned Prosecutor of the Pleas Bergen, at the direction of Attorney General Katzenbach, dismissed all the remaining indictments—the one against Mrs. Hall and the two Stevenses for the murder of the Reverend Dr. Hall and the pending indictments against Henry Carpender which charged him with participation in both murders. The pending charge against Di Martini also was dismissed.

So far as the Hall-Mills case was concerned, the law had run its course.

It was commonly gossiped that Mrs. Hall, the Stevenses and the Carpenders had spent over $400,000 in the defense of the charges against them. None of the defendants bothered to dispute the rumor.

From time to time after the trial, items appeared in the press which recalled the Hall-Mills tragedy to its generation—the appearance of Charlotte Mills in a vaudeville act; a court action by a hitherto unnamed person against Mrs. Hall and her brothers to recover damages because their lawyers had interviewed him and, after taking up his time, had failed to

call him as a witness; libel actions brought by Mrs. Hall and her brothers against the New York tabloid and another New York newspaper; and "confessions"—one from a convict in a Michigan penitentiary and one from an inmate of an Oklahoma penitentiary—which were quickly proved to be hoaxes.

The "pig woman" died shortly after the trial. As of this writing, all the principals—Mrs. Hall, Henry Stevens, Willie Stevens and Henry Carpender—have gone to their last rewards (or punishments). Devouring time likewise has removed from the earthly scene most of the actors in the minor roles—the witnesses, the police, the prosecutors and the defenders. Mrs. Hall's "luxurious Nichol Avenue mansion" is now the property of the New Jersey State College for Women. The famous crab-apple tree under which the dead bodies of Dr. Hall and Mrs. Mills were found has long since disappeared—according to one account, chopped down, cut up and sold in pieces to morbid collectors as souvenirs. De Russey's Lane, now paved Franklin Avenue, is fronted by closely built-up residences and no longer provides for ardent wooers that seclusion which in an earlier day was its chief attraction.

All that remains is the mystery.

Who killed the handsome rector and the pretty blond choir singer?

Why were they murdered?

Do the undisputed facts that Mrs. Mills's tongue, larynx and upper windpipe—"all of the organs used in singing"—were cut out of her throat and the passionate love letters she had sent to the dominie scattered over her mutilated body suggest that the murders were prompted by jealousy, spleen or revenge?

If so, who might have had such motives?

Was the "pig woman" telling the truth?

These are questions the reader must answer for himself. The "due processes of the law" have given him no help.

IV

The Trials of

HANS MAX HAUPT

and

OTHERS

for Treason, in

HARBORING A GERMAN SABOTEUR

(1942-1944)

4

The Hans Haupt Case

THE SPECIAL SIGNIFICANCE *of this case is that it illustrates the uniqueness of the crime of treason against the National Government. The crime is unique because it is the only crime defined in the Federal Constitution. That basic instrument not only defined the crime ("levying war against the United States or adhering to their enemies, giving them aid and comfort"), but prescribed the quantum of proof required to convict (a "confession in open court or the testimony of two witnesses to the same overt act"). Conviction of the crime of treason, says the Supreme Court of the United States, has thus been made "difficult but not impossible." Sustaining this statement is the fact that in the 157 years of its history preceding April 1945* (Cramer *v.* United States, *325 U.S. 1) that august tribunal had never had occasion to review a conviction for treason, and the Haupt case (330 U.S. 631) was the first case to come before that court in which a judgment of conviction for treason was considered and affirmed.*

The trial was tense drama. The background of the action was the most threatening war in our national history, and the action itself a "spy story" as weirdly fantastic as the most brilliant of Edgar Wallace's imaginings, with crosscurrents of emotion as clashing and harrowing as the play and counterplay of a Greek tragedy.

This combination of dramatic background and the difficulties which beset the prosecution in its ultimately successful effort to convict an "aider and comforter of the enemy" of the crime of treason gives the Haupt case an unusual appeal to both the lawyer and the lay reader, and clearly entitles it to rank as one of America's Notable Trials.

IT WAS IN THE SUMMER of 1789 that fifty-five delegated and dedicated representatives of twelve of the thirteen war-ravaged, disaffected and loosely federated American commonwealths, lately freed from the galling yoke of Great Britain, met in the historic statehouse in Philadelphia to try to replace the collapsing confederation with "a Federal Government adequate to the exigencies of the nation."

James Madison recorded that, when the "battle of the giants" had brought forth the great compromise which settled the structure of the Federal Government and its relationship to the states, the delegates considered that "inasmuch as treason may be committed against the United States, the authority of the United States ought to be enabled to punish it."[1] From the notes of the same illustrious reporter it is possible to reconstruct the proceedings out of which evolved the Constitution's provisions respecting treason—provisions that have remained unchanged to this day.

The learned men in the Constitutional Convention distrusted treason prosecutions. They had before them the recently published and widely circulated *Commentaries* of William Blackstone on the common law, which recited the long and bloody history of treason laws and treason prosecutions in England. There they read of treasons "new and strange" that had been written into the statute books until at one time there were twenty-four separate species of treason for which the hapless Englishman might be put on trial and face the barbarous punishments which followed conviction for the "most heinous of all of the crimes known to English law."

Contemplation of this record prompted Benjamin Franklin to declare that "prosecutions for treason were generally virulent," and led Madison to report in the following clear language the determination of the Convention:

But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring

[1] *The Federalist*, No. XLIII.

of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for the conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.[2]

Much later Mr. Justice Jackson of the Supreme Court, writing on the Cramer case,[3] commented:

Distrust of treason prosecutions was not just a transient mood of the Revolutionists. In a century and a half of our national existence not one execution on a Federal treason conviction has taken place. . . . After constitutional requirements have been satisfied, and after juries have convicted and courts have sentenced, Presidents again and again have intervened to mitigate judicial severity or to pardon entirely. We have managed to do without treason prosecutions to a degree that probably would be impossible except while a people was singularly confident of external security and internal stability.

The confidence of "external security," of which the learned justice speaks, that imbued the founding fathers was the protection on the east of an ocean which required the fastest-sailing craft weeks to cross, and on the west of a limitless stretch of impassable wilderness. The confidence in "internal stability" could have meant only the unvoiced belief that there would be no alien accretions in population save those of liberty-seeking people who, like the founders themselves, had fled from Old World tyrannies to find a haven in a New World.

Franklin, in one of his lighter moments, expressed the wish that after his death he might be embalmed in a cask of old Madeira and recalled to life a hundred years hence "by the solar warmth" of his "dear country." Had his wish been fulfilled and his awakening postponed by fifty years he would

[2] *Ibid.*
[3] *Cramer* v. *United States*, 325 U. S. 1.

probably have welcomed a return to his vinous receptacle.

For one thing, he would have found to his disappointment that the "internal stability" on which he and his confreres had so heavily counted had been weakened by an unselected and unsupervised tide of immigration. To our shores have come millions of potentially patriotic citizens honestly prepared to renounce their allegiances to foreign princes and philosophies. With them have come many others to whom the lure of America was not a love of our institutions and desire to aid in their development, but the opportunity that residence here afforded for personal material gain or for aid to the ambitious designs of foreign powers.

The good doctor would have found also that the "external security" which he forecasted for his beloved country had disappeared, and that new instruments of communication had obliterated distance and brought Europe to the very door of America. One of these new instruments, particularly—a fantastic construction called a "submarine"—could in time of war travel beneath the surface of the ocean from Europe to the United States in less than a fortnight, bringing enemies armed with new and deadly gadgets and materials for destruction designed to threaten the very life of the nation he had done so much to build.

It was a new generation of Americans, far removed by time and farther removed by the changes time had wrought since the days of Franklin and Madison, which in 1941 faced a ruthless enemy bent on the destruction of the American Commonwealth. There was no "external security" save that afforded by the Army and Navy of a brave and determined people. The real threats to our "internal stability" had to be met and overcome by a resourcefulness which would outmatch the best effort of our foes.

The Haupt case is a part of the great American saga of how twentieth-century America met that challenge.

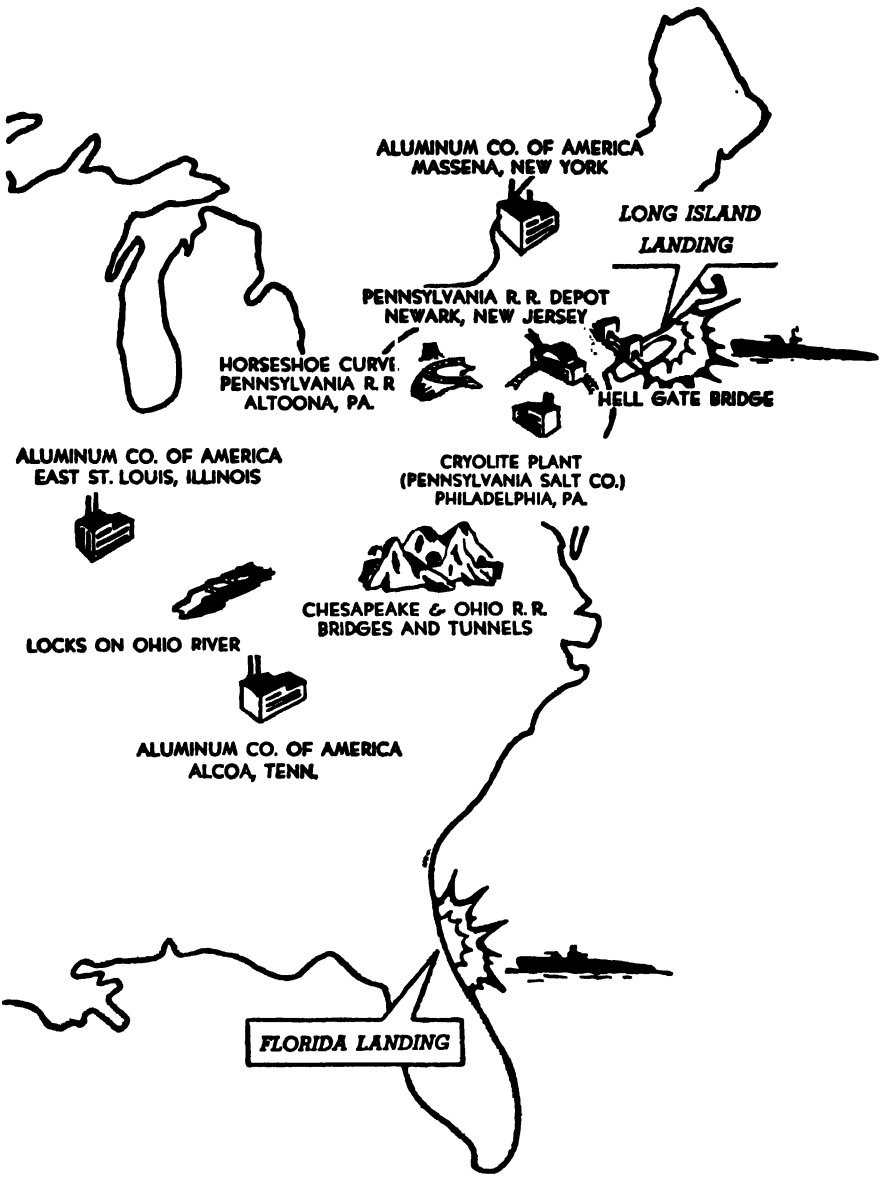
For the United States and its allies the year which followed the Japanese sneak attack on Pearl Harbor held the darkest and most harrowing hours of World War II. The closing days

of June 1942 particularly found the eagerly awaited press and radio announcements laden with dire news. France had been lost. Rommel had captured Tobruk and Matruh and was pursuing the retreating English toward Alexandria. On the Russian front the Germans had invaded the Crimea and were at the gates of Sevastopol. The Japanese had effected a landing in force on Kiska in the Aleutians.

Serious as these war communiqués were, they yielded space and time on June 28 to the revelation of a new and—because it posed a new threat to our internal security and industrial organization for defense—more frightening menace.

On this day the Federal Bureau of Investigation of the Department of Justice released the startling information that two separate groups of highly trained Nazi spies and saboteurs had landed from German submarines on the coasts of Long Island and Florida. Provided with huge sums of American money and carrying novel and devastating instruments of destruction, the men arrived with carefully conceived plans to wreck America's largest industrial plants and transportation facilities, to destroy or disrupt New York's vital municipal services and to spread panic throughout the land. Particularly marked for destruction were the manufacturing plants of the Aluminum Company of America at Massena, New York, Alcoa, Tennessee, and East St. Louis, Illinois; the cryolite plant of the Pennsylvania Salt Company at Philadelphia; the Chesapeake & Ohio Railroad bridges and tunnels near Washington; the Pennsylvania Railroad depot at Newark, New Jersey; the "Horseshoe Curve" in the Pennsylvania Railroad at Altoona, Pennsylvania; "Hell Gate Bridge" between Astoria in Queens and the Bronx; the locks on the Ohio River between Cincinnati, Ohio, and Cairo, Illinois; the aqueducts and system supplying water to New York City; and the mammoth hydroelectric installations at Niagara Falls.

To assauge the fears of the populace, the release carried conspicuously the heartening information that "almost from the moment the first group set foot on United States soil" on June 13 the alert and ubiquitous agents of the F.B.I. "were



VITAL WAR INDUSTRIES MARKED FOR DESTRUCTION
BY GERMAN HIGH COMMAND.

on their trail," and that all eight of the saboteurs were now in custody.

The press was furnished with photographs, names and brief biographies of the German agents: Richard Quirin (alias Quintas), Edward John Kerling (alias Kelly), Herman Neubauer (alias Nicholas), Heinrich Heinck, Ernest Peter Burger, George John Dasch, Werner Thiel and Herbert Haupt. Dasch, the oldest of the group, was thirty-nine; Haupt, the youngest, twenty-three. All of them had previously resided in and worked at various times in the United States. All spoke, read and wrote English. Except for a year spent in reaching Germany and in attending a "sabotage school" there, Haupt had lived in Chicago from the time he was five years old. None of the eight was an American citizen.[4]

Unstinted praise was given in follow-up news accounts to "the swift and sure work of the F.B.I." and its continued activities in running down the "spy aides" who had sheltered or concealed the saboteurs. The expressed determination of the President and the Attorney General to deal "swiftly and thoroughly" with the saboteurs and their confederates was hailed with approval.

On July 3 the President proclaimed that the national safety demanded that all enemies of the United States who entered upon the territory of the United States as a part of an invasion or predatory incursion should be promptly tried in accordance with the Thirty-eighth Article of the Laws of War.[5] The record of the trial, including judgment or sentence, was to be transmitted to him for his personal action.

Simultaneously with the proclamation the President appointed as a military commission to hear the case: Major General Frank R. McCoy, Major General Blanton Winship, Major General Walter S. Grant Major General Lorenzo D. Gasser, Brigadier General G. V. Henry and Brigadier Gen-

[4] Herbert Haupt claimed United States citizenship because of the naturalization of his parents during his minority. This contention was rejected by the Supreme Court of the United States (*Ex Parte Quirin*, et al., 317 U. S. 1).

[5] U. S. C., Title 10, Sec. 1509; F. C. A., Title 10, Sec. 1509.

eral John T. Kennedy. Attorney General Francis Biddle and the Judge Advocate General Myron C. Cramer were named as prosecutors, and Colonel Cassius M. Dowell and Colonel Kenneth Royall assigned as counsel for the defendants.

It was announced that the trial would be held in secret in one of the offices of the Department of Justice. The charges against the accused were made public: (1) they had violated the Laws of War; (2) they had violated Article 81 of the Articles of War defining the offense of relieving or attempting to relieve, or corresponding with, or giving intelligence to the enemy; (3) they had violated Article 82 of the Articles of War defining the offense of spying; and (4) they had conspired together to violate Articles 81 and 82.

The hearing of testimony was begun on July 8 and continued until July 28, when a petition for a writ of habeas corpus on behalf of seven of the eight defendants was presented to the Supreme Court of the United States.[6]

The Chief Justice of the court in an unprecedented procedure immediately summoned the associate justices to a special session and set the cases for hearing on July 29. Colonels Royall and Dowell appeared for the petitioners. Attorney General Biddle, Judge Advocate General Cramer, Assistant Solicitor General Cox and Colonel Erwin W. Treusch represented the Government.

For two days the opposing attorneys argued the main contention of the petitioners—that the President was without constitutional or statutory authority to order the petitioners to be tried by a military commission, and that the accused were entitled to a trial by jury in the civil courts. On July 31 the Supreme Court denied the writ and handed down its unanimous opinion that the President's order convening the military commission was lawful, and the commission lawfully constituted and empowered to try the petitioners.[7]

Hearings were resumed, and the testimony and arguments were completed on August 1. Two days later the tribunal's

[6] Dasch did not join in the petition.
[7] *Ex Parte Quirin*, 317 U. S. 1.

sealed and secret findings were transmitted to the President of the United States.

On August 8 it was officially announced that the President had approved the unanimous judgment of the commission that all eight of the defendants were guilty as charged. Six of them—Quirin, Kerling, Neubauer, Heinck, Thiel and Haupt—were sentenced to immediate death by electrocution.[8] Burger was sentenced to life imprisonment, Dasch to imprisonment for thirty years.

The only information vouchsafed as to the reason for the clemency extended to Dasch and Burger was that they had "given the Government assistance."

The preparation of evidence for the secret military trial of the eight principals in the spy plot had not been permitted to interrupt or slacken the hunt for accessories. On July 14 the F.B.I. announced the arrest in Chicago of Hans and Erna Haupt (the parents of Herbert Haupt); Walter and Lucille Froehling (the uncle and aunt of Herbert Haupt); Otto and Kate Wergin (parents of Wolfgang Wergin, who had accompanied Herbert Haupt when he left Chicago for Germany in 1941); and two others in Chicago and eight in New York who were alleged to have given aid and comfort to or dealt with saboteurs Neubauer, Thiel, Quirin, Heinck and Kerling.

On July 16 the first detailed information about the discovery of the saboteurs' landings was made public. The first group of four—Dasch, Burger, Quirin and Heinck—had been put ashore from a German submarine on Long Island, near Amagansett, in the early morning of June 13. While making their way inland through the fog shortly after the landing they were challenged by a member of the Coast Guard patrolling the beach—Second Class Seaman J C. Cullen. Dasch, the leader of the group, answered the challenge, talked to Cullen, handed him $300 in currency and walked on. Cullen, *who from all accounts was unarmed,* immediately reported the occurrence to his superior officer, who, with Cullen and a

[8] The sentences were carried out on August 9.

number of others, hastened to the scene of Cullen's encounter. By that time the saboteurs had made good their escape. Probably Cullen never realized his luck. The instructions given the spies by their mentors in Germany had been positive and definite: if upon their landing they were accosted by an American sailor or soldier, they were to overpower and kill him as quickly as possible. For reasons which were not publicly known until long afterward, Dasch disobeyed these orders.[9]

A careful examination by the Coast Guard of the Long Island beach where the saboteurs had landed revealed their hastily and carelessly buried equipment. These findings were promptly reported to the F.B.I. Other information, whose source was not divulged until later, led to the discovery of weapons and materials concealed by the group which landed in Florida. These were assembled and, with other incriminating facts and circumstances, presented to grand juries in Chicago and New York as evidence against the alleged accessories.

On September 4, 1942, a grand jury for the United States of America, empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois, returned an indictment against Hans Max Haupt, his wife Erna Emma Haupt, Walter Otto Froehling, his wife Lucille Froehling, Otto Richard Wergin and his wife Kate Martha Wergin. These six persons, as citizens of the United States and owing it their allegiance, were charged with having unlawfully, traitorously and treasonably adhered to and given aid and comfort to enemies of the United States—namely to the government of the German Reich, with which the United States had at all times since December 11, 1941, been at war.[10]

Specifically it was charged that on or about June 17, 1942,

[9] In recognition of Cullen's service he was promptly promoted and awarded the decoration of the Legion of Merit.

[10] The evidence against two others, Harry and Emma Jaques, who had been arrested in Chicago on information that they had sheltered and aided the saboteur Neubauer, was deemed insufficient, and they were released.

Herbert Haupt, an agent of the German Reich, came into the United States and, between June 17 and June 27, served the German Reich as secret agent, saboteur and spy in carrying on its war with the United States; and during that period the defendants, well knowing that Herbert Haupt was an agent, saboteur and spy of enemy Germany, harbored, relieved and assisted him. The indictment concluded by charging the defendants with forty-one separate "overt acts" which specified the harboring, relief and assistance they had given Herbert Haupt.

The defendants were immediately arraigned, and all pleaded not guilty. Demurrers to the indictment for its alleged insufficiency and uncertainty came on for oral argument on October 15 and were heard and overruled.[11] Motions by each of the accused for separate trials were likewise overruled, and the joint indictment was set for trial on October 26.

The presiding judge was the Honorable William J. Campbell, a comparatively new judicial appointee. Before his elevation to the bench he had served for several years as United States Attorney for the Northern District of Illinois.

Appearing as counsel for the Government were the Honorable J. Albert Woll, United States District Attorney, Richard G. Finn and Earle C. Hurley. All were well-educated, conscientious and competent practitioners who had previously participated with conspicuous success in the trial of important civil and criminal cases.

Paul A. F. Warnholtz had been selected by the defendants to represent them, and he called Benedict J. Short into the case as associate counsel. Warnholtz was a general practitioner with many years of experience. Short was one of the outstanding members of the Chicago criminal bar, a persuasive advocate with an impressive record of acquittals in difficult cases.

The business of getting a jury without preconceived opinions as to the guilt or innocence of the accused consumed the

[11] 47 Fed. Supp. 832.

better part of two days. As finally chosen, the panel consisted of four men and eight women who swore they could try the case and render a verdict based solely on the law and the evidence.

District Attorney Woll made the opening statement for the prosecution. "The Government," he solemnly began, "intends shortly to disclose to you in this courtroom a picture of treason." He then proceeded to strip the indictment of its legal obscurity and let the jurors know that the six defendants were charged with forty-one specific acts of treason in knowingly aiding, counseling and assisting Herbert Haupt, a spy and saboteur in the pay of the German government, in his mission to destroy property within the United States, and to commit other acts which would cripple the United States in carrying on its war against Germany. He stated frankly the burden which the law imposed on the prosecution—to prove each of the overt acts charged by the testimony of two witnesses, and beyond a reasonable doubt, and he promised that each of the forty-one overt acts charged in the indictment would be so proved.

Short followed with a brief opening statement for the defense: Herbert Haupt left his home in the summer of 1941, saying he was going to Mexico. Later his parents received from him a card mailed in Mexico. When Herbert returned to Chicago in June 1942 he informed his parents he had been in Japan and Germany. He told them nothing of his work in Germany. None of the defendants knew that Herbert Haupt was a secret agent and spy for the German government. Such harboring and assistance as the defendants Hans and Erna Haupt gave him were innocently given as natural acts of a fond father and mother for an only son who had been away from home for a year. As for the evidence Woll had promised the Government would submit against the other defendants, they knew nothing of it. So far as it involved actions of theirs, those could be explained as simple acts of affection and kindness to a relative or old friend.

"We will show by the evidence," declared Short, "what

they know about it. We will have them tell you their story, their whole story, so that you will have both sides. On our side you will have these defendants, and on the other side you will have these expert investigators. And then you will have a complete picture of what has happened here. It is not treason to help a son."

The Government called seventy-two witnesses, thirty-three of whom were agents, special agents, supervising agents or assistant directors of the Federal Bureau of Investigation.

The evidence produced by the Government was directed to two principal ends: first, to establish that Herbert Haupt was an agent, spy and saboteur in the service and pay of the German government; second, to prove that the defendants, knowing he was such an agent, spy and saboteur, had aided him in the mission of destruction which he had undertaken for the German government.

There was no doubt of the convincing quality of the Government's proof that Herbert Haupt was an agent, spy and saboteur in the service and pay of the German government.

The first witness called to make this proof was Ernest Peter Burger, one of the eight saboteurs and a prisoner in the custody of the Federal Bureau of Prisons. This was his startling story:

He was born in Germany in 1906 and in 1927 came to the United States, where he worked as a tool and diemaker. In June or July 1933 he returned to Germany and took up permanent residence there. He followed civilian employment until 1941, and then enlisted in the German army as a private soldier. Burger was shown photographs which he identified as pictures of Lieutenant Walter Kappe of the German army and "agents" George Dasch, Heinrich Heinck, Richard Quirin, Edward J. Kerling, Herman Neubauer, Werner Thiel and Herbert Haupt.

In April 1942 in a German military-training school in Brandenberg (two hours' ride from Berlin) he met and became part of a "class" with Dasch, Heinck, Quirin, Kerling,

Neubauer, Thiel and Haupt. Lieutenant Kappe was in charge of the school.

This class consisted of two groups of four each, and each group had its leader. Dasch, Quirin, Heinck and Burger were in Group 1, with Dasch as leader. Group 2 was led by Kerling and included Neubauer, Thiel and Haupt.

The Brandenberg school was a considerable plant, covering many acres of ground with numerous buildings which were used for "teaching and experimental purposes." There were laboratories, railroad tracks, locomotives and cars, and a pit for trial tests of explosives. The class was instructed in the manufacture and combining of chemicals to produce explosives and incendiaries, and in the manufacture, assembly and detonation of fuses and timing devices. They were taught the ordinary commercial uses of potentially destructive chemicals so that they might assign legitimate reasons for their purchase. They learned how to run locomotives and how to damage them by shutting off the oil supply and putting sand in the bearings. On visits to electric-utility and aluminum-manufacturing plants they were shown "vulnerable spots" for sabotage. On an artificial lake just outside the Brandenberg school they were given a course in boarding, maneuvering and landing from inflated rubber boats.

They received special instructions as to what they were to do when they reached America. Each was to establish a "front." Burger, who had some artistic talent, was to set up an artist's studio and ally himself with artists' groups and advertising organizations. Another, who was a cook by trade, was to purchase a small restaurant. A third was to buy a farm and set up a private agricultural-experiment station which would enable him to buy chemicals. A fourth was to buy a machine shop. Haupt, who had learned the trade of a lens grinder in America, was told to get back his old job with the Simpson Optical Company. He was cautioned to register for the selective-service draft as soon as he reached the United States.

The class completed its course on May 1, 1942, and the

graduates were then told what they were expected to accomplish in the United States. Kappe said their principal assignment was to do as much damage as possible to specified aluminum-production plants and to the railroads serving them, because this would cripple airplane production.

All eight men, together with Lieutenant Kappe, left Berlin on May 22, 1942, and proceeded first to Paris and then to Lorient. Here they received their "equipment"—a strange assortment. Each man was given a tin-lined wooden box about twelve inches square and eight inches deep, packed with explosives, timing devices, fuses, detonators, time clocks, "watches" and "pen-and-pencil sets." Each box was put in a "sea bag" and its possessor cautioned to stay with it constantly.

The watch, said Burger, was an ordinary pocket watch "connected with a wire and a small bolt introduced in a celluloid cover, connected with a battery on one side and connected with explosives on the other, and after the hands of the watch would reach a certain point a short circuit would result, and naturally the thing would go off." The pen-and-pencil sets, he added, were even more ingenious. "The fountain pen contained a small glass container with sulphuric acid. The sulphuric acid would eat through a separating piece of cellophane after a certain time and finally reach a combination of calcium chloride and powdered sugar. It would instantly result in a high-powered flame and then result in setting off the detonator. The pen-and-pencil sets were also used for incendiaries. The pen and pencil in the set had to be adjusted and used together to cause an explosion. Separated, either would write as an ordinary pen or pencil.

One type of explosive looked like a small block of black coal about five inches by three inches by two and one half inches, but it was filled with enough trinitrotoluene (TNT) to blow up a square block. There was an inconspicuous hole in it to accommodate a detonator. The proper detonators were in the boxes with the blocks.

In addition to their boxes each group was provided with

two small hand shovels, which were to be carried in the sea bags. Each man was given also a zipper bag for his personal belongings; a German marine fatigue uniform, a regulation German navy cap and a complete outfit of civilian clothes; and, as a means of identification, a United States Social Security Card. All except Haupt had Selective Service Registration Cards. (All the cards were, of course, forgeries.)

On May 27, at 6:00 P.M., Haupt's group received orders from Lieutenant Kappe to make ready for immediate departure by submarine. All had worn their German uniforms since leaving the school at Brandenberg. They were told to keep them on while aboard the submarine and while landing on the shores of the United States, but to change to civilian clothes once they were safely landed.

At Lorient, just before the departure of Haupt's group, United States currency was distributed. Each man received a money belt containing $5,000 in fifty-dollar bills and $400 in bills of smaller denominations. Kerling, as leader of Group 1, received, in addition to his personal allotment, a much larger sum—between $50,000 and $60,000, Burger estimated. Burger left Lorient with Group 2 by submarine on May 28. After a similar distribution of money, Dasch, as leader, got $82,000. The members of both groups understood they were to assemble for a meeting at an agreed rendezvous in Cleveland, Ohio, on July 4.

Burger and his associates reached the coast of the United States off Long Island on June 13. Between midnight and one o'clock in the morning they left the submarine in a rubber boat and landed on a desolate stretch of shore near Amagansett, Long Island. Immediately they exchanged their uniforms for civilian clothes, stuffed the military garb in their sea bags, got out their shovels and buried both the bags and the shovels in the sand. Dasch encountered one of the Coast Guard, but handed him some money and was allowed to pass.

At Amagansett the men caught a train for Jamaica, where they split up in accordance with Lieutenant Kappe's orders. It was agreed that all would meet at a designated rendezvous

in New York City the following day. Dasch and Burger proceeded to New York and registered at a hotel. Heinck and Quirin registered at another. Burger remained in New York until the following Saturday, June 20, when he was arrested in his hotel room by agents of the Federal Bureau of Investigation.

Twenty-one items—a "pen and pencil" set, fuses, electric blasting caps, detonators, time clocks, a "watch delay device," a "coal block," an ampule containing sulphuric acid, German naval caps, trench shovels, a money belt, a zipper bag, four tin-lined wooden boxes, Selective Service registration and Social Security cards—were shown to the witness and identified as equipment identical with that given him and his companions in Germany and brought by them to the United States. He was shown also a finger ring, which he identified as one that Haupt had worn while a student at the Brandenberg school.

On cross-examination Burger testified that he had never been a citizen of the United States. He saw Herbert Haupt in Washington during the military trial of Haupt, himself and their six companions, and last saw him in his cell on August 8. At the same time he had seen Kerling, Quirin, Heinck, Thiel and Neubauer. He had not seen any of them since and assumed "they had given their lives for their country." His own sentence was life imprisonment, but he denied that he had been promised special consideration in exchange for his testimony.

Three agents of the Federal Bureau of Investigation testified that on June 25, 1942, in company with Edward J. Kerling (the leader of Haupt's group) and another bureau agent and photographer, they had traveled by automobile from Jacksonville, Florida, thirty miles south to Ponta Vedra and some four miles beyond. On the beach they started to dig at a point designated by Kerling and uncovered four tin-lined wooden boxes. All were carefully marked for identification, photographed and delivered into official custody. The boxes were opened and found to contain the assort-

ment of articles that had been previously shown to and identified by the witness Burger. With this further identification they were offered and received in evidence.

One agent related a conversation with Herbert Haupt shortly after his arrest in which Haupt told him the location of the navy caps and shovels which his group had buried in the Florida sands and which up to that time had not been recovered. The witness immediately telephoned a bureau agent in Florida and gave him the location Haupt had designated. That agent proceeded to the spot and unearthed the four navy caps and the two shovels. The Florida agent corroborated this testimony.

Burger's story was corroborated also by a young man named Leibl. An American born of German parents, Leibl had gone to Germany with his father and mother in 1939 when his father accepted an offer of profitable civil employment there. In June 1942 the boy returned to America through "diplomatic exchange" and joined the United States Marines. He knew Lieutenant Kappe, and Herbert Haupt at Kappe's suggestion had made a friendly call on him in Stuttgart, Germany, sometime around May 1, 1942. Haupt told Leibl he had left the United States to avoid the Federal Bureau of Investigation, which was trailing him because he had been spreading Nazi propaganda. Haupt said he had crossed the border into Mexico, made his way to Mexico City, got in touch with the German consul and, through his influence, secured passage on a Japanese boat to Japan. There, again, he had reached the German consul and obtained passage on a blockade runner which took him around Africa to France and to Germany. Leibl said he saw Haupt only on that one occasion.

Four witnesses connected in various capacities with the Seminole and Mayflower hotels in Jacksonville, Florida, identified photographs of Kerling, Neubauer, Thiel and Haupt as persons who had registered at one or the other of these hostelries on June 17. The registration cards were produced as corroboration.

A sales girl in a Jacksonville jewelry store identified a photograph of Herbert Haupt as that of a man who had purchased a wrist watch and a billfold from her on June 17. The articles were produced, and she identified them as the merchandise she had sold.

The Government called a number of witnesses to testify to Herbert Haupt's life and activities in America before he left on the trip which ultimately led him to the sabotage school in Brandenberg, Germany.

An only child, he was born in Germany in 1919 and was brought to Chicago by his mother in 1925. He finished public grammar school and for a year or two attended classes intermittently at the Lane Technical High School, but did not graduate. When about nineteen he started to work for the Simpson Optical Company in Chicago. Most of his time from then until May 1941 was spent in the company's training school learning the trade of lens grinder. The Simpson Optical Company, under a Government subcontract, was engaged, among other things, in the production of the famous "Norden Bomb Sight." There was no evidence, however, that young Haupt ever worked on this project or had any opportunity to learn the closely guarded secret of its manufacture.

Before he left Chicago in June 1941 Herbert Haupt lived with his parents in their four-room apartment at 2234 Fremont Street. Occasionally, while his parents were employed as a housekeeping couple in Glencoe (a north Chicago suburb), he spent the night at the home of his uncle, the defendant Walter Froehling.

In May 1941 Herbert announced to his parents his intention of going to Mexico with Wolfgang Wergin (son of the defendants Otto and Kate Wergin) and another lad named Hugo Troesken. They left Chicago sometime between the tenth and twentieth of June.

It was definitely established that in August 1941 young Haupt cabled his parents from Tokyo and gave them his address and that in the next December they cabled a reply

to Tokyo in which they wished him a happy birthday, a merry Christmas and good luck.

The Government's Evidence Against Hans and Erna Haupt

The Haupts, either separately or jointly with the Froehlings and the Wergins, were charged with having committed thirty-three of the forty-one overt acts alleged in the indictment. These involved harboring and giving sustenance to Herbert Haupt, the agent and spy of an enemy country; transporting him by automobile from place to place and purchasing an automobile for him to aid and further his designs; accepting, safekeeping and concealing the money he had received from the German government to carry out the designs of the enemy; concealing his identity as an enemy agent; urging, counseling and advising him to give false and misleading information to the agents of the United States Government for the purpose of concealing his identity; aiding, counseling and advising him to register under the Selective Service Act so as to assist him in concealing his identity; and counseling and conferring with him and arranging conferences for him with the Froehlings and Wergins to further the designs of the enemy.

Five witnesses (Stanley and Barbara Kluczyk, Frederick Weltrock, Carl Eggert and Emil Tobsing) testified to various occasions between June 21 and June 27 when they saw Herbert Haupt in the Haupt apartment; with the Haupts at the Froehling and Wergin residences; on the street with his mother; or in the early hours of the morning, coming out of the apartment building in which the Haupts lived and driving away in a taxicab or in an automobile the Haupts had purchased for him.

Andreas Grunau, general manager and superintendent of the Simpson Optical Company, testified that about 8:00 P.M. on June 22, 1942, Mr. and Mrs. Haupt and Herbert drove

up to his house in an automobile. After ushering them into the house and greeting them he told Herbert someone had been inquiring for him at the factory and asking why he had not registered for the draft. Herbert showed him his registration card and said he had already attended to that, and asked if he could get his old job back. The witness told him to report at the factory the following Thursday and file his application. Grunau's testimony was corroborated by his wife and daughter, who were present throughout the conversation.

Heinrich Koch, foreman of the Simpson Optical Company, testified that at about 9:30 on the same evening he also received a call from Hans and Erna Haupt and their son Herbert. They came in Hans Haupt's automobile. Herbert told him he would like to do defense work at Simpson's, and Hans Haupt said that on that morning Herbert had been to see the F.B.I. and his draft board, and "all of that had been taken care of." Koch commented that Herbert was still in the draft and "it isn't so easy when you are out [meaning out of the draft] so long. You might have to go right away." Herbert replied that Mr. Grunau thought that, since he had two years' experience, the factory might get a deferment for him. All this took place in the presence of Hans and Erna Haupt.

Two salesmen connected with an automobile sales agency testified that on the evening of June 23 Hans and Herbert Haupt came into their salesroom and the older man said he wanted to buy an automobile for his son. They selected a 1941 Pontiac coupe whose sales price was $1,045. An invoice and bill of sale was made out to Hans Haupt, who made a down payment and promised to come in and complete the deal the following evening. Father and son returned the next evening at about 8:00 P.M. Hans Haupt paid them $405 in currency (which included two fifty-dollar bills) and gave his note for $60.00 and a mortgage for the balance of the purchase price. Herbert Haupt drove the Pontiac away.

Two employees of a Chicago north-side bank testified that on June 24 Erna Haupt withdrew $150 from her savings

account. After the withdrawal there remained a balance of $51.00.

Carl Eggert, a building mechanic who had done some work for Hans Haupt, described a meeting with Hans Haupt in a tavern on Sunday, June 28. After paying Eggert for his week's work Haupt told him he had $900 of his own money, but he was expecting the F.B.I. to search his house. Would Eggert keep the money for him? Eggert agreed, and later in the day Hans Haupt came to his home and gave him a sealed envelope which he said contained $900. Two days later, after hearing of Herbert Haupt's arrest, Eggert opened the envelope and saw that it contained eighteen fifty-dollar bills. Eggert put the money in a box where he kept his own money, and it stayed there until the following Thursday when two F.B.I. men came to see him and asked him about it. He showed them where the money was and allowed them to take it away with them.

Mrs. Eggert corroborated her husband's story that Hans Haupt called on him on Sunday afternoon. She did not, she said, hear or learn what had passed between them.

Two agents of the Federal Bureau of Investigation testified that they called on Eggert on the afternoon of July 2 and asked him about the $900. He showed them where it was, and they counted it and found it amounted to $900 in fifty-dollar bills. The money and the envelope were given identification marks and held as evidence.

Gustave Zermer, a tinsmith, testified he called on his "good friends the Haupts" in the early evening of June 23 and found Herbert there with a girl friend—Gerda Melind. Hans Haupt asked Zermer privately if he had a room in his house which he could rent to Herbert. When Zermer answered that there was no room available Hans said that Herbert "traveled around" and asked if it could not be arranged so that Herbert's mail could be sent to Zermer's house. In the same conversation Hans said he was afraid to have Herbert around the house.

Gerda Melind testified she was in the Haupt home when

Zermer called, but heard no part of the conversation between Zermer and Hans Haupt.

Mildred Gordon, a clerk in the office of Selective Service Board No. 66 in Chicago, identified a photograph of Herbert Haupt and swore that he came to the office of the Board on June 22, 1942. He told her he should have registered in July 1941 but had been away in Mexico mining gold at that time and wanted to register now. Miss Gordon registered him and gave him a registration card.

An agent in the downtown Chicago office of the Federal Bureau of Investigation testified that Herbert Haupt called at that office about 11:30 A.M., Monday, June 22 and was interviewed. On this occasion Herbert displayed a Selective Service registration draft card which indicated he had registered at Selective Service Local Board No. 66 on June 22, 1942.

Another F.B.I. agent testified that he arrested Herbert Haupt on Saturday, June 27, at 9:08 A.M. He searched him and took from him a finger ring, a wrist watch, a billfold and a Selective Service registration card. (The ring had previously been identified by the witness Burger as a ring he had seen Herbert Haupt wear while attending the Brandenberg sabotage school. The watch and billfold had been identified by the salesgirl of the Jacksonville, Florida, jewelry store as the watch and billfold she had sold to Herbert Haupt on June 17.)

Three agents of the Federal Bureau of Investigation testified they went to the Haupt home on the evening of June 27 and told Hans Haupt his son had been arrested. They asked permission to search the apartment, and Mr. and Mrs. Haupt signed a form "waiver of search" and permitted them to do so. In the bedroom, underneath a rug which lay on the floor and extended beneath the bed, the agents found a brown envelope which contained fifty-one fifty-dollar bills. They asked Hans Haupt whose money it was, and Haupt declared with great vehemence that it was his own—his "life's savings." When the agents asked how he accounted for the money being in

fifty-dollar bills Haupt said that was the way he had of keeping his "working capital." He acknowledged having a bank account, but said he dealt mostly in currency. The search yielded also a necktie with a "Made in Paris" label, a necktie with a Jacksonville, Florida, store tag, and a new two-suiter traveling case bearing a Jacksonville hotel sticker.

Seven agents of the Federal Bureau of Investigation participated in the taking of a series of four statements from Hans Haupt. In the late afternoon of June 28 four agents called at his home and told him they wanted him to come with them to the downtown field office of the Bureau in the Bankers' Building. Haupt made no objection. At the request of the agents and without protest he signed what was termed in the trial a "waiver of custody."[12]

Haupt accompanied the agents to the central field office. When he arrived there he was put in a "detention room"—a cubicle about ten feet square—and told to divest himself of all his clothing. He did so, and an attendant supplied him with a shirt, overalls, white stockings and a pair of slippers. One of the Government witnesses, an agent of the Bureau, explained to the jury that this was "routine procedure with all arrested suspects," the purpose being "that in the event the

[12] Each of the defendants signed similar waivers. Because of the contentions to be made later by the Government in the Court of Appeals with respect to these waivers, a copy of one signed by the defendant Walter Froehling (the only one set out in the record) is presented here. The paper read as follows:

"I, Walter Otto Froehling, do hereby consent to remain under the continuous physical supervision of the Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, without immediate arraignment, and at such place as may be designated by the said Agents, while information furnished or to be furnished by me regarding any violation of the laws of the United States is being verified.

"This I regard solely as a step necessary for my protection during the progress of this investigation, and my consent to this arrangement is, therefore, freely given by me without fear of threat or promise of reward. It is, however, not to be construed as an admission of guilt on my part.

"The foregoing having been read by me and having been found to be a true and exact representation of my voluntary decision in the matter, of my own free will I herewith affix my signature in approval thereof.

/s/_____

Witnesses:

/s/_____

/s/_____"

persons have anything on their clothing by which [they] could do harm to themselves or anyone else in the vicinity, they can be removed before their clothes are returned to them."

Hans Haupt was kept at the central office from about 5:00 P.M. on the twenty-eighth until sometime during the night of the thirtieth, when he was removed to a cell in the village jail at Winnetka, Illinois, a suburban community about twenty-five miles north of Chicago. He was questioned for about five hours on the twenty-eighth, and about 1:00 A.M. on the twenty-ninth he signed a six-page statement. On the twenty-ninth he was subjected to about two hours' further questioning and signed a supplemental statement of two pages. On the thirtieth he was again questioned—this time for three or four hours—and signed a third statement of eight pages.

According to the testimony of one of the three Federal Bureau of Investigation guards at the Winnetka jail, he had a conversation with Hans Haupt about eight o'clock in the evening of July 1. Haupt said he thought Walter Froehling and Otto Wergin were going to agree on a story they would furnish to the F.B.I. which would protect them by involving him; he would like to talk to somebody. The guard telephoned downtown, and in about three quarters of an hour three agents from the central office arrived. Haupt talked to one or another of these until 1:00 A.M. on July 2, when "Special Agent" Schaeffer arrived on the scene. Schaeffer questioned Haupt for another two or three hours and then dictated to a stenographer a statement which was transcribed and presented to Haupt for signature about 8:30 on the morning of July 2. Haupt, according to Schaeffer's testimony, read and initialed each of the first nine pages and signed his name in full on the tenth and last page.

All the statements sworn to have been made and signed by Hans Haupt were offered and—over the strenuous objections of defense attorneys that they were not voluntary but had been obtained by duress and deceit—received in evidence.

Haupt's last statement was a substantial repetition of his three previous statements with additions which, if they were to be believed, established his own and his codefendants' guilty knowledge of Herbert Haupt's status as an enemy agent and his designs against the United States. It was by far the most detailed of any of the statements taken from the defendants. These were its more salient disclosures:

Hans Haupt was born in Labes, Germany. He was drafted into the German army in World War I, saw active service and was honorably discharged. In March 1919 he married Erna Emma Froehling, and their only child, Herbert, was born in Germany the following December.

In 1923 Haupt came to the United States and settled in Chicago, where he worked as a journeyman and contracting bricklayer, paper hanger and decorator. He was a member of the Chicago Chapter of the German War Veterans, the "Bund" and a number of other German societies.

In June 1941 his son Herbert told him he wanted to go to Mexico and Guatemala, and Hans Haupt gave him $80.00 toward the expenses of the trip. Herbert left Chicago sometime that month in the company of Wolfgang Wergin and a boy named Troesken. Hans received several cards from Herbert from Mexico and, in August, received a cablegram from him from Tokyo. He and his wife sent a reply telegram to Herbert at Tokyo in early December 1941.

That was the last Hans heard from Herbert until June 19, 1942. When he got home from work that day, about 6:30 P.M., his landlady, who occupied an apartment in the same building, told him Mrs. Haupt had gone to see her sister-in-law Mrs. Froehling, who was very sick. Hans was to come over there as soon as he could.

He found that his sister-in-law was not sick, but that his son Herbert was there. Herbert said he had come from Germany and, in the presence of Mr. and Mrs. Froehling, proceeded to tell of his trip to Mexico, of getting acquainted with the German consul in Mexico City, of catching a plane and connect-

ing with a ship for Japan, of going to Tokyo, of getting in touch with the German consul there, of catching a freighter which ran the British blockade and, after eighty-four days, docked at Bordeaux, France, and of his going to Paris, Verdun and Berlin. He told also of his life in Germany—of going to the intelligence school and being taught how to blow up factories and bridges and depots.

Herbert told them, too, of his submarine trip to the United States, of the landing in Florida and the burial of his German uniform and his box of explosives. One of his companions had come with him to Chicago and was registered at the Knickerbocker Hotel. He had given his companion the telephone number of the Froehlings as a place where he could be reached if needed.

At the Froehlings' Herbert displayed a grayish-green zipper bag and asked Walter Froehling to keep it for him. Hans wanted to know what was in the bag, and Herbert answered that about $15,000 was concealed in a double false bottom; the money had been furnished by the German government.

When the Haupts left the Froehlings', Herbert accompanied them to their parked auto and then suddenly turned and ran back into the house, saying he had forgotten his money belt. He came back almost immediately with the belt in his hand. When they got home Herbert ripped the belt open and took out $3,000. He asked for and was given an envelope, put some money in it and then pushed the envelope under the corner of the rug in the bedroom.

Hans Haupt, his wife and Herbert drove over to the Wergins' at 1:30 the next afternoon and Herbert Haupt repeated to Otto Wergin the details of his trip to Mexico, Japan, France and Germany. Wolfgang, he said, had enlisted in the German army, and both of them had received a medal and the iron cross.

"If you need me," Otto Wergin said to Herbert, "I am willing to go along; just let me know. I am not dumb. I know how to help you out" The Haupts left the Wergins' about

4:00 A.M., and Herbert went to the Froehlings' to sleep because he expected a call from his pal at the Knickerbocker Hotel.

The next morning, Sunday, Herbert telephoned his parents and asked them to come over to the Froehlings' and to bring his suitcase. They did so. A short time after they got there the Wergins came in, but did not stay long. Walter Froehling said a gathering of so many people "looked suspicious." The Haupts and the Wergins left together and went to the Haupt apartment, where Herbert told more of his work and experiences in Germany.

On Monday Hans insisted that Herbert must register for the draft and report to the F.B.I. Later in the day Herbert told him he had registered and displayed his registration card. Herbert added that he had been to the F.B.I. and learned it had no record of him.

About this time Herbert began talking about wanting a car. Hans said he did not have enough money for a down payment, so his wife drew $150 out of her savings account and Herbert gave him $100. Hans put up the balance and later bought a car which he and Herbert selected. The sales ticket and other papers were made out in the name of Hans Haupt.

On Monday evening Hans, his wife and Herbert drove in Hans's car to call on Mr. Grunau, the superintendent of the Simpson Optical Company, and Mr. Koch, the company foreman, to see about Herbert's getting his job back.

Haupt's statement said he saw Herbert in their Fremont Street apartment at various times on Tuesday, Wednesday and Thursday. Friday, the twenty-sixth, he saw him drive away in his new Pontiac at 7:00 A.M. and heard him enter the house at midnight. He saw him for the last time when he left the house at about 9:00 Saturday morning.

Haupt admitted that when the agents of the Federal Bureau of Investigation found the envelope containing $2,550 under the bedroom rug he told them the money was his—his life's savings. That statement, he said, was not true.

Five agents of the F.B.I. related various talks they had with

Erna Haupt and the taking of four separate statements from her, three of which she signed. The last one, taken on July 3, was the most complete and was treated by the Government as superseding the three earlier ones.

On that day at the request of the agents of the Bureau she signed a "waiver of custody" and accompanied them to the downtown office. There she was put in one of the detention rooms. A matron waited on her, and she was stripped of her clothing and provided with "a pair of slippers and a housecoat." Thus attired, she was taken into one of the small offices and questioned from 4:00 in the afternoon until 7:30 or 8:00 in the evening. A statement was prepared which she read over and signed. It was then about 2:00 A.M., and she was given back her clothes and driven by one of the agents to her home.

All four of the so-called statements of Mrs. Haupt were offered in evidence. Despite the vigorous objections of the defense attorneys that these were not voluntary statements, they were admitted by the Court with a caution to the jury that they were binding only on the defendant, Erna Haupt.

Mrs. Haupt's statements, while not so fully detailed, corroborated those of her husband. She said that all the defendants—the Froehlings, the Wergins, her husband and herself—doubted Herbert's story and thought "he was making it up." When they arrived home after leaving the Froehlings she fixed up a bed for Herbert on the couch. He slept the next day until dinnertime and, when he woke up, evaded her questions.

She admitted withdrawing $150 from her savings account to help finance the purchase of an automobile for Herbert. She denied knowing anything about the money her husband had given to Eggert. Her husband did tell her that Herbert had some money hidden under the bedroom rug and that they would have to watch the boy.

She had never realized her son's purpose in returning to this country and, even had she known it, would not have thought him capable of carrying it through. After he had

registered and reported his visit to the F.B.I. office and been released without further questioning she thought everything was all right.

The Government's Evidence Against Walter and Lucille Froehling

The Froehlings, either separately or jointly with the Haupts and the Wergins, were charged with having committed eleven of the forty-one overt acts alleged in the indictment. Except for the omission of references to transporting Herbert Haupt from place to place and providing him with an automobile, the charges were substantially the same as those made against the Haupts.

Outside the "statements" taken from them by the agents of the F.B.I., there was very little direct evidence against the Froehlings of contacts with Herbert Haupt.

Alfred Grunow, a cousin of Walter Froehling, visited him at his home on Whipple Street in Chicago on Saturday, June 20, and stayed with him until the following Monday. Grunow testified that about 6:00 or 7:00 Saturday evening Walter Froehling told him he would have a bedfellow that night; Herbert Haupt would be in later. Grunow had known Herbert Haupt before and, when he awoke at 5:00 Sunday morning, he found Herbert in bed with him. About 11:00 A.M. Herbert received a telephone call and shortly afterward left the apartment.

A woman who lived in the same building with the Froehlings testified that on Sunday, June 21, she saw Herbert Haupt come out of the Froehlings' kitchen.

Four agents of the F.B.I. swore that they called at the Haupt apartment about ten o'clock on the evening of June 27. Mr. and Mrs. Froehling, Mr. and Mrs. Wergin and Mr. and Mrs. Haupt were there. The agents asked Walter Froehling to come along with them, and drove him to his home on Whipple Street. Asked if Herbert Haupt had left any of his

belongings there, Froehling answered, "Yes, a bag." He pointed to the top of a dining-room cabinet or sideboard which stood about eight feet high and was edged on the top with an ornamental railing. Standing on the floor, one could not see a bag. Froehling was requested to sign a form "waiver of search" and did so. One of the agents reached to the top of the cabinet and took down a bag. He ripped it apart and in a false bottom found $9,950 in fifty-dollar bills.

The Government's Evidence Against Otto and Kate Wergin

The Wergins, either separately or jointly with the Haupts and Froehlings, were charged with having committed sixteen of the forty-one overt acts alleged in the indictment. To the charges made against the Froehlings was added the charge that the Wergins had destroyed or concealed from the officials of the United States Government letters and correspondence tending to disclose Herbert's identity and mission in the United States.

Testimony concerning the Wergins' contacts with Herbert was given by Alfred Grunow and four other witnesses. Grunow stated that on the evening of the twenty-first Hans and Erna Haupt and the Wergins called at the Froehlings', and shortly afterward Herbert came in. They all talked together, but Grunow did not hear what they said.

Mrs. Mary Gesorski, a former landlady of the Wergins, testified that in the fall of 1941 Mrs. Wergin told her she had received a letter from her son Wolfgang: he was in Japan with Herbert Haupt and might go to Germany. He had left the United States rather than be drafted and, if he had to fight, preferred to fight for Germany.

Lorraine Demmler, a young woman who until the arrest of the Wergins had boarded with them, said that for two months before the Wergins were taken into custody she saw them every day and heard them talk freely about their son and

Herbert Haupt. They told her that "Wolf" had gone with Herbert to Japan by way of Mexico, and from Japan would make his way to Germany. Mrs. Wergin showed her some letters which she had received from Wolf from Japan. One of them referred to the German consul in Tokyo; another said "they" (Wolf and Herbert) had a chance to go to Germany. Mrs. Wergin added that Mr. Wergin had told her she ought to burn the letters because the F.B.I. might find them, but she had kept them because she was afraid she might never see Wolf again. The witness told also of a trip Mrs. Wergin made to New York shortly after the declaration of war to bid farewell to a member of the German consulate staff there.

On Sunday, June 21, Miss Demmler entered the Wergin apartment about 1:30 P.M. and found Hans and Erna and Herbert Haupt there. She had never met Herbert, and Mrs. Wergin, instead of introducing her by name as she always did with strangers, simply said, "Lorraine, this is a friend of ours." After the Haupts left, Miss Demmler said to Mrs. Wergin, "That was Herbert Haupt, wasn't it?" and Mrs. Wergin answered, "Yes."

The witness learned of Herbert's arrest on Sunday, June 28, and heard Mrs. Wergin say to her husband that she thought the F.B.I. would be around to see them.

On Tuesday evening, June 30, when Miss Demmler came to the Wergin apartment after her day's work she found an F.B.I. agent there. He told her she might be called to the downtown office for questioning. She busied herself helping Mrs. Wergin prepare supper. The Government agent remained in the front room, but sat where he had a clear view of the kitchen. While she was there Mrs. Wergin said in a low tone, "I don't know what they are doing here; they have been here since eleven o'clock this morning." Then, in a much louder tone of voice which the agent could not have helped hearing, she said, "They have been questioning me about letters. I do not know anything about any letters." In a whisper she added, "Lorraine, remember, don't mention the letters." The witness asked Mrs. Wergin, also quietly, what

she had done with the letters, and Mrs. Wergin said, "I burned them."

Miss Demmler was taken to the central office of the Bureau later that night and questioned. The next day when she got home from her work at about 12:30 P.M. another F.B.I. agent was there. Mrs. Wergin was in bed, but got up and went to the kitchen with the witness. There Mrs. Wergin, in a low and anxious voice, asked if she had told the F.B.I. agent about the letters. Miss Demmler said she had not, but knew that Irene, Mrs. Wergin's daughter, had. Almost immediately Mrs. Wergin dressed and left the house to find Irene.

Mr. and Mrs. Schonwald of New Haven, Connecticut, testified they had known the Wergins in Germany and later when both families lived in Chicago. Kate Wergin visited them in Connecticut in the summer of 1941. During that visit she told them that Wolfgang was in Mexico and intended to go to Germany.

The remainder of the evidence against the Froehlings and the Wergins consisted of statements taken from them by the agents of the F.B.I. between June 27 and July 3, 1942. In all there were seven such statements.

In his final statement Walter Froehling admitted that when Herbert Haupt returned on June 19 he had told Froehling of his trip to Germany, his course of training in the Brandenberg sabotage school, his trip by German submarine to the Florida coast. He showed him a canvas belt and a leather zipper bag which he said contained money. Herbert said he was going to leave the bag with Froehling, and he put it on top of the sideboard where the Bureau's agents afterward found it. Froehling admitted that after the Haupts had left the apartment and were getting into their automobile Herbert came running back and said he had forgotten something; he went into the bathroom, where he had previously shaved, and came out with the money belt in his hand.

Lucille Froehling's statements added very little to the Government's evidence. She admitted that before Herbert's departure for Mexico he had occasionally stayed overnight with

them rather than take the twenty-five-mile trip to Glencoe where his father and mother were then working. After his return to Chicago he spent Sunday night in their apartment. She too remembered that after the Haupts had left her house on the evening of the nineteenth Herbert came back and said he had forgotten his money belt; she saw him come out soon with something in his hand.

In Otto Wergin's statement he admitted that his son Wolfgang Wergin, with Herbert Haupt and another boy, left Chicago in June 1941 to go to Mexico "for a vacation"; he had since received cards from his son from Mexico and Japan, but had heard nothing from him since Christmas of 1941.

He saw Herbert Haupt on Sunday, June 21. His sole interest in Herbert was to find out what had become of his son Wolfgang. Herbert first said he had left Wolf in Mexico, but later said he was in Germany. Herbert told Wergin he and several companions had come to America on a German submarine and been landed somewhere on the Florida coast. Wergin was not to repeat anything; if he did, Wolf would surely be shot by the Gestapo. Wergin swore he had not believed Herbert's story; if he had believed it, he would have reported it regardless of the consequences to his son.

Kate Wergin's written statement was not offered in evidence, but one of the F.B.I. agents testified to what she said. It was essentially a corroboration of the statement made by her husband. All of their associations with the Haupts and the Froehlings had been directed to trying to learn something about their son Wolf.

The written statements of Otto Wergin, Lucille Froehling and the two final statements of Walter Froehling, when offered in evidence by the Government, were met with the vigorous defense objection that they were inadmissible because they had not been given voluntarily but had been obtained by duress and deceit. Except for the objection directed to the statements made by Walter Froehling, no attempt was made by the defense to support these objections

with extraneous evidence. With reference to these, however, Froehling and his wife took the stand and, out of the presence of the jury, gave their sworn testimony as to the circumstances under which they were taken.

Froehling said that from the time he was taken from the Haupt apartment he was in the custody of the Federal Bureau of Investigation and constantly under armed guard. He was served with no warrant, and his request for a lawyer was ignored. He was nervous and frightened and exhausted by long and continuous questioning. One of the agents repeatedly called him a liar and, when he hesitated in his answers, threatened him with the remark, "Remember what happened to Hauptmann; he wouldn't talk." When he was in his cell in Winnetka and felt indisposed to eat, the same agent said "with an insulting remark" which Froehling would not repeat, "Let me get in this cell and I'll knock him down and see if he will eat." Froehling admitted his signature to the statement of June 30, but declared he had no recollection of having signed the one of July 3.

Lucille Froehling's testimony added but little. She saw her husband for about fifteen minutes on June 30 in the central office of the Bureau in Chicago, and he appeared "nervous" and "strained."

The F.B.I. agents and guards concerned with Froehling's custody—six of them—denied practically everything that Froehling had testified to. He had not asked for a lawyer; he had not been called a liar; he had not been threatened or abused.

The Court declared the overwhelming weight of the evidence showed that the "confessions" were voluntary, and the defense objection was overruled. The jury was recalled and the statements were read to it as evidence against the defendant Walter Froehling.

To establish the mental attitude of the defendants as showing a partisanship for Germany and a willingness to aid that nation in its war against the United States, the prosecution

called a number of witnesses who related conversations in which the defendants expressed their feelings and sentiments.

Mrs. Louis Fishman, for whom the Haupts had worked in Glencoe, testified that during the period of their employment—February 1940 to March 1941—Mr. and Mrs. Haupt "talked every day about Hitler": "he was a godsend to the German people and would make conditions better"; "if the United States entered the war, we would have a revolution here like the one they had in Germany"; "they" had people in the electric companies and armories that "would take them over." Once in the fall of 1940, said the witness, Hans Haupt remarked that France and Norway had been taken by the Fifth Column and "the same thing would happen here." She discharged the Haupts in March 1941, and her husband reported to the F.B.I. that they were people to be watched.

Edward Jaskulski, a guard employed by the Sanitary District of Chicago, testified Hans Haupt had once told him that this war (World War II) would not be like the last one—everything had been taken care of.

Hans Poppe, a journeyman painter and decorator who worked with Hans Haupt during 1937, 1938 and 1939, described various conversations he had with him. On one occasion Haupt said he would never permit a son of his to join the United States Army; he would send him to Mexico and from there to Germany to join the Luftwaffe. At another time Haupt told him that his feelings were all for Germany and, if the United States got him into the Army, he would crawl through the enemy lines and tell him of our positions.

Willy Schroeder, an elevator operator in one of the hotels where Haupt did some decorating work, testified that until 1941 he and Haupt were fellow members in the German War Veterans Association and the German Bund, and that Haupt was always talking about what a wonderful man Hitler was and how we needed someone like him in this country. Schroeder recalled a celebration of "German Day" at Riverview Park in Chicago in 1939 when a number of speeches were made urging the people in the audience to send relief

money to Germany. He declared himself opposed to doing so, and Haupt told him he was not "a good German."

There was also considerable testimony as to "pro-German" talk by the Wergins. Mr. and Mrs. Schonwald said both the Wergins talked a great deal about the war between Germany and England and Russia. Kate Wergin visited them in Connecticut in 1941 and at that time told them that she had received letters from friends in Germany who said they were doing well there—making more money than they could make in the United States. Mrs. Wergin wanted Mrs. Schonwald to go with her to New York City to bid good-by to "the Heberlings," who were connected with the German consulate and were leaving for Germany. Mrs. Schonwald did not go, but Kate Wergin did, and, after she came back, told of "seeing them off" on the boat. After hearing of Herbert Haupt's arrest Mr. Schonwald volunteered this information to the Federal authorities.

Lorraine Demmler, the Wergins' roomer, testified that both the Wergins stated frequently that "everything was better in Germany" and "they would like to go back"; "Hitler was a fine man—would get rid of the Jews."

Mrs. Tim Kelly, whose parents were native-born Germans, said she lived in the same building with the Wergins and had known them since 1936; Mrs. Wergin occasionally worked for her. The Wergins had told her Germany had been persecuted during the last war and "England and France had confiscated everything." The German children starved, they said; the Jews had got control, and the Germans worked for nothing. Once Mr. Wergin told Mrs. Kelly his American citizenship papers did not mean any more to him than to throw them into the gutter; he would like to go back to Germany.

On several occasions after war had been declared Mr. Wergin told her he wanted Germany to win. At one of these times he said that, if the United States went to war, its population would be wiped out before the next day; this would be accomplished by spreading germs on the water. It was

this statement which prompted Mrs. Kelly to tell her husband he ought to report the Wergins to the F.B.I., and he did so.

There was almost no evidence of this character against the Froehlings. One witness, a neighbor who lived in the apartment above them, testified that in January 1942 she heard Mrs. Froehling say, "I know one thing—our German people will never be left penniless after this war."

On November 13, 1942, the Government formally rested its case.

Defense counsel presented a separate motion by each defendant for a directed verdict, which asserted that the Government had failed to make proof of the overt acts charged by a confession in open court or by two witnesses. They also presented four other motions to strike from the record specified evidence, particularly, the so-called "confessions," which they contended had been erroneously admitted in evidence. No oral arguments were made in support of any of the motions, and all were promptly overruled.

Contrary to Short's opening statement that the defendants would "tell the jury their whole story," Warnholtz announced that the defendants elected to stand on the case made by the prosecution and would also rest.

The attorneys were ordered to proceed with their summations.

Finn opened for the Government. His argument was a straightforward and, for the most part, unemotional statement of the Constitutional definition of the crime of treason and a summary of the proved acts of the defendants which constituted the commission of that crime. He stressed the fact that all the defendants had voluntarily become citizens of the United States and, by so doing, had renounced absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom they had theretofore been subjects or citizens. Despite this solemn obligation, said the Government prosecutor, Herbert Haupt,

as the product of the Nazi philosophy of his parents, left this country to become a traitor and a saboteur.

He reviewed the testimony of Burger and the agents of the F.B.I., which revealed unmistakably the mission of Herbert Haupt and his "most diabolical, most cunningly conceived, most satanically prepared plot to cripple the war industries of this country." One by one he held up to the jury's view the "fiendish" exhibits—the "watch," the "pen-and-pencil set," the "coal block" and the various other devices of destruction—and recited the evidence as to their designed operations.

Next he reviewed the evidence against each of the defendants which, he maintained, established beyond a shadow of a doubt that they knew Herbert Haupt was a saboteur and spy in the pay of the German government and were prepared to and did aid him in his designs.

Mr. Finn closed with a stirring appeal:

Ladies and gentlemen, we are engaged in a great conflict. Men of our nation are spread throughout the far-flung battlefields of the world. This is not only a war of soldiers in uniform. This is a war of the people, of us. It has got to be fought not only on the battlefield, but in the factories, in the homes, in the hearts and in the allegiance of every citizen of the United States. At such an hour we cannot, we dare not, tolerate within our midst these fifth columnists and traitors.

Finn's argument was a complete and effective summation of the Government's case. There was little his associates could add.

Finn was followed by Defense Attorney Warnholtz. Warnholtz did not—indeed, he could not—seriously dispute that Herbert Haupt was an agent of the German Reich. His argument was directed—as, from an advocate's standpoint, it should have been—to attempting to convince the jurors that all the actions of the defendants, as shown by the Government's evidence outside the "confessions," could be ex-

plained and rationalized as the innocent acts of a father and mother, an uncle and aunt, and two others (the Wergins) whose sole interest in Herbert Haupt had been anxiety for the safety of their own son. The "confessions," Warnholtz contended, had been extorted by fear, threats and deceit; they were not voluntary; they did not speak the truth; they ought not to be considered by the jury.

Warnholtz dwelled on the Constitutional requirement that each of the overt acts of treason alleged must be proved by the testimony of two witnesses. He proceeded to take up each of the forty-one alleged overt acts and argue that none of them had been established by that necessary proof.

Short followed with a brief argument. He made a frank appeal to the prejudices and sympathies of the jury—denunciation of the highhanded, tyrannical and heartless methods of "the F.B.I. men," "trained witnesses . . . who know what they have to do" and pleas for the consideration of the defendants as "honest working people," "fathers and mothers the same as you jurors are . . . loving their children the same as you jurors do."

Herbert Haupt's parents, said Short, gave him food to eat and sheltered him. Was that treason? They knew the F.B.I. was looking for him because he had failed to register for the draft, and they urged him to register and see the F.B.I. and clear his record. Was that treason? He said he wanted to get his old job back, and they drove him in their car to see his former employers. Did that make them guilty of treason?

Short concluded with an apostrophe to the jury system—"one of God's given blessings"—and an exhortation to "let the principles of humanity and human nature" guide them to a righteous verdict.

The closing arguments of Hurley and District Attorney Woll defended the activities and testimony of the Government's agents—trying the police, they said, was "an old trick" of a criminal lawyer defending a hard case. The agents of the F.B.I. had simply done their duty—done it effectively and

done it for the protection of the jurors themselves and all other patriotic and loyal citizens of the United States. They reminded the jurors of the evidence against the defendants which the attorneys for the defense had not discussed—Miss Demmler's testimony against the Wergins, the finding in Eggert's house of $900 in fifty-dollar bills which Hans Haupt had given him for safekeeping, the finding of $2,550 in fifty dollar bills in the Haupt home tucked under the bedroom rug, the finding in Walter Froehling's home of $9,950 in fifty-dollar bills which were in a bag Herbert Haupt had given Froehling to keep for him.

The district attorney closed his argument with a ringing blast designed to answer the defense argument that all that had been done to aid Herbert Haupt had been the natural and innocent acts of fond fathers and mothers and relatives.

I say the defendants have been proven guilty. With that understanding that they have been proven guilty, I say to you that we have got a great number of fathers and mothers and relatives to consider. We don't want sympathy to permit a miscarriage of justice in this case. We don't want to break the hearts of those other innocent mothers and fathers and relatives who are now in America, hoping that we will be able to keep the interior of this country safe while our men are fighting on the battlefields. I say to you that it would be a sad day for America when the very thing that these people are trying to destroy, that is, trial by jury, should be the means of preserving them so that they can continue to try to destroy this country.

The arguments concluded, Judge Campbell instructed the jury, and in the late afternoon of November 14 the jurors retired to commence their deliberations. They were out for less than six hours. Their verdict as to each of the defendants was "guilty as charged in the indictment."

Each defendant filed a separate motion for a new trial. All were denied by the court, and on November 24 judg-

ment was pronounced. Erna Haupt, Lucille Froehling and Kate Wergin were sentenced to serve terms of imprisonment in a Federal penitentiary for twenty-five years and to pay a fine of $10,000. Hans Haupt, Walter Froehling and Otto Wergin were sentenced to death by electrocution.

Each of the defendants prayed and perfected appeals to the United States Court of Appeals. It was a year almost to the day after Herbert Haupt's arrest that the Court of Appeals handed down its unanimous decision reversing the judgment of conviction of the District Court.[13] The briefs and arguments of counsel for the defendants had asserted sixty-five separate claims of error to justify their plea for a reversal of the lower court's judgment. The Court of Appeals considered only four: (1) the sufficiency of the indictment; (2) alleged error in the admission in evidence of the fourteen "statements" or "confessions" of the defendants; (3) the court's denial of the defendants' motions for separate trials; and (4) the alleged error in the lower court's charge to the jury.

The court held the indictment good in substance and in form.

Following precedents set by the Supreme Court of the United States in two cases decided March 1, 1943[14] (after the judgment had been entered against Haupt and the others), the Court of Appeals held that the admission of the so-called statements of the defendants was prejudicial error which compelled a reversal of the case.

The precise point involved is interesting and, strangely enough, one which, although available in previous Federal cases where convictions had resulted, had never before been urged. A statute of the United States makes it the duty of a United States marshal, deputy *or other officer* who may arrest a person charged with any crime or offense "to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction . . . for

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[13] 136 F. (2d) 661 (decided June 29, 1943, opinion by Mr. Justice Major).

[14] *McNabb* v. *United States*, 318 U. S. 332, and *Anderson* v. *United States*, 318 U. S. 350.

a hearing, commitment or taking bail for trial."[15] It was held by the Supreme Court (Mr. Justice Frankfurter speaking for the court) that a proper construction of this statute required that a person so arrested should be brought before a United States commissioner or other magistrate *before* the arresting officer could take a statement from him, and that if a statement was taken *before* bringing the defendant before such commissioner or magistrate, it would be inadmissible against the defendant on his later trial.

The attorneys for the Government argued strenuously that the defendants had waived the benefit of this statute by signing the "waivers of custody." The Court of Appeals rejected this contention, declaring that a waiver, in whatever form, could not relieve an arresting officer of the duty cast on him by statute to take the defendant before the nearest United States commissioner or other proper judicial officer.

As to the lower court's denial of the defendants' motions for separate trials, the statement of the Court of Appeals was short and pointed: while the trial court, perhaps from lack of knowledge of what the evidence would be, did not err in denying the preliminary motion for a severance, after the Court had seen the resulting harm to the defendants it was an abuse of discretion not to grant the motion for a new trial.

The Court of Appeals found that the trial court's charge to the jury was erroneous: Four of the given instructions (prepared by the Court on its own motion) stated the law incorrectly, and several of the instructions requested and tendered by the defendants were proper and should have been given.

On July 27, 1943, the case against all six defendants was remanded to the District Court for retrial. On September 24 it was set down for trial and disposition before the senior judge of the District Court, the Honorable John P. Barnes.

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[15] U. S. C., Title 18, Sec. 595; F. C. A., Title 18, Sec. 595. (In force and effect on and after March 2, 1901; now rule 5 of the Federal Rules of Criminal Procedure, effective March 21, 1946.)

The opinion of the Court of Appeals forced the Government to make a complete reappraisal of its evidence to determine what would be admissible against each of the six defendants in separate trials.

At the February 1944 term of court the Government submitted its evidence, minus the statements given to agents of the F.B.I., to a new grand jury, and a separate indictment charging treason was returned against each defendant.

The new indictment against Hans Haupt was not essentially different from the joint indictment on which he had previously been tried. It charged him with the commission of twenty-nine overt acts. We are concerned with only twelve of them, since the remaining seventeen were withdrawn from the jury's consideration on the second trial. Six of these twelve charged Hans Haupt with harboring Herbert Haupt for six successive days from June 22 to June 27, 1942; two with having accompanied him to the homes of former employers to secure his re-employment; and four with having accompanied him to an automobile agency to purchase an automobile for him and having paid part of the purchase price—all with the knowledge that Herbert Haupt was an agent of the German Reich and that what he (Hans Haupt) was doing was aiding and abetting an enemy of the United States.

Immediately after the return of the indictment Warnholtz filed his appearance as attorney for Haupt. His demurrer to the new indictment was promptly heard and overruled. His next move was a petition for an inquiry into Haupt's sanity. Since his first trial Haupt's physical health had grievously declined, and it had been given out that he was suffering from hallucinations and evidenced suicidal tendencies.

Judge Barnes acted promptly on the petition by appointing four distinguished alienists to examine the defendant. The Court elected to call an advisory jury to determine two questions: (1) whether Hans Haupt was capable of understanding the nature of the proceedings against him, and (2)

whether he was capable of advising rationally with his counsel.

The petition came on for hearing April 17, 1944, before Judge Barnes and a jury. The determinative evidence was that of the Court's appointed alienists. Two of these gave it as their unqualified opinion that Haupt was sane. The other two expressed some doubt, but, when shown letters Haupt had recently written from his cell,[16] they declared with equal positiveness that the man was sane.

The jury, after a retirement and deliberation of less than thirty minutes, returned a verdict that Haupt was mentally capable of understanding the nature of the proceedings against him and of advising rationally with his counsel. The Court concurred in the verdict. On April 25 the defendant was duly arraigned, and a plea of not guilty was entered on his behalf by his counsel.

The case came on for trial on May 22, 1944. Presiding was the Honorable John P. Barnes. Although he was occasionally given to hasty judgments, critics and friends alike acknowledged his outstanding legal ability, his probity, courage and fairness. It was generally conceded that in the trial of criminal cases he "leaned over backward" to avoid doing an injustice to even the meanest of the unfortunates who appeared before him.

Appearing for the defendant with Warnholtz was his office associate, Frederick J. Bertram, a sincere and competent lawyer. Benedict Short, who had previously been associated with Warnholtz, had so failed in health that he was unable to participate in the second trial. The same counsel as before—Messrs. Woll, Finn and Hurley—appeared for the Government.

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16 The Government had instructed the warden of the Cook County jail to make photostatic copies of all notes or letters sent from his cell by Haupt. One of these was a note to his wife in another section of the jail in which he referred to his pending insanity petition and the tests which the doctors had made; it expressed the hope that "everything will come out all right." Another was a letter to the United States marshal complaining of some infected teeth and asking that arrangements be made with a dentist to extract them.

On May 24, 1944, a jury of six men and six women were solemnly sworn to try the case.

With the exception of the testimony of the Government agents to whom Haupt had given the four written, signed statements and of the statements themselves, the Government reintroduced practically all the evidence that it had directed particularly against him on the former trial. Burger elaborated his previous testimony with sworn declarations that Herbert Haupt was given specific instructions by Lieutenant Kappe at the Brandenberg school to proceed from the landing point of the submarine directly to Chicago and there purchase an automobile to be put at the disposal of the two groups of saboteurs; to procure information from the Simpson Optical Company concerning the Norden Bomb Sight; and to get in touch with trustworthy "political people" and deposit money with them as a contingent fund for the groups in case of emergency.

Two F.B.I. agents testified to a conversation with Hans Haupt in the United States marshal's office in Chicago on August 5, 1942, after he had been arrested on a warrant issued by a United States commissioner for the Northern District of Illinois and was represented by counsel. At this time he repeated to them almost everything contained in the written statement he had made on July 1 and 2, 1942, while in F.B.I. custody at the Winnetka jail.

Counsel for the Government, warned by the reversing opinion of the Court of Appeals in the earlier case, directed the remainder of their evidence meticulously to the requirement of dual proof of each of the overt acts charged and relied on by the Government to establish its case.

F.B.I. agents numbering from two to ten had "shadowed" Hans's and Erna's and Herbert's every movement between June 21 and 28. Five of these testified to having trailed the three to the homes of Grunau and Koch on the evening of the twenty-second.

Mr. and Mrs. Kluczyk and Wittrock repeated the testimony they had given on the first trial and were corroborated by

three agents who had the building at 2234 Fremont Street under twenty-four-hour surveillance on June 22 and 24 and noted the times that Herbert Haupt and his father and mother left and entered.

The testimony of Gustav Zermer and Gerda Saure (formerly Melind) as to Zermer's visit to the Haupt apartment on the twenty-third was corroborated by the testimony of four F.B.I. operatives who swore they saw Zermer enter and leave the building at the times he claimed to have done so.

On June 25 ten agents of the Bureau were watching the Haupt apartment. These testified they frequently saw Herbert Haupt enter and leave it. Also, they saw his car parked in front of the building for long periods of time. Two of them noticed that on one occasion when he came out of the house he had on a suit of clothes different from the one he had worn when he entered a short time before. Two others testified that he entered late at night, and after he had been inside for a short while all the lights were extinguished. He did not leave the building until the next morning.

Carl Eggert, a witness on the former trial, repeated his statement that he saw Herbert Haupt come out of the building in the early morning of the twenty-fifth, spoke to him and then watched him get into his car, which was parked at the curbside, and drive away. Several of the Bureau's agents corroborated him.

To establish the charge that the defendant harbored and sheltered Herbert Haupt on June 26 and 27, F.B.I. agents (four as to the twenty-sixth and five as to the twenty-seventh) swore that on those days they saw Herbert Haupt enter and leave the building frequently.

To prove the four separately charged overt acts which concerned the visit of the defendant and Herbert Haupt to the automobile sales agency and the defendant's purchase of an automobile for Herbert Haupt, the Government corroborated the testimony of the two salesmen by calling six F.B.I. observers. These testified that they trailed a Plymouth car, driven by the defendant with Herbert Haupt as a passenger,

from the defendant's home to the automobile salesroom. They saw the two inside talking to one of the salesmen for thirty-five or forty minutes and later saw Herbert Haupt drive away from the place in a Pontiac coupe.

To prove that the defendant had knowledge of his son's mission and acted with treasonous intent, the prosecution called Mrs. Kluczyk, Carl Eggert, Hans Poppe, William Schroeder and Mrs. Fishman, who repeated the testimony they had given on the former trial.

The prosecution also called as witnesses two convicts who were serving life sentences in the Illinois state penitentiary at Joliet. These testified that, while in the Cook County jail awaiting trial, they frequently met and talked with the defendant. According to their testimony, Haupt talked very freely. He told them his son Herbert left Chicago in 1941 and had gone to Mexico; later he heard from his son from Mexico, Japan and Germany. While Herbert was in Germany he went to a German sabotage school and learned how to blow up ammunition dumps, factories and railroad trains and obstruct traffic. He came back to America in a German submarine, landed somewhere on the coast of Florida, hid his explosives in the sand and made his way to Chicago. Herbert asked his father to help him, and Hans promised he would. The boy had brought a lot of money from Germany; some of it he gave to his father for safekeeping, and Hans hid it underneath a rug. Herbert took $1,000 from a money belt and gave it to Hans to buy an automobile which Herbert needed in his work for Germany. There was a company in Chicago which manufactured "some kind of a sight," and Herbert tried to get a job there so he could get the plans of it and send them to Germany. Hans made his son register for the draft because he knew he could not get a job without a registration card and the F.B.I. had been looking for him because he had not registered.

One of the witnesses recalled asking Haupt why he "had not turned his son in." Haupt answered that his son was his own flesh and blood and "after all, he was helping the

Fatherland." Both witnesses said Haupt was outspoken in his admiration for Hitler and Germany and his contempt for the armed forces of the United States.

On June 2, 1944, the Government completed the presentation of its evidence and rested. The defendant's motion for a directed verdict was overruled.

Reversing the tactics employed on the former trial, Haupt's attorneys called a number of witnesses in defense.

Five contractors or mechanics associated in work with Haupt swore they saw him on June 20, 21, 22, 23, 24, 25, 26 and 27 going about on his jobs in working clothes or after work in the evening in his favorite tavern or German society. He looked and acted as he had always done.

There was testimony that on June 27 one of Haupt's customers gave him a check for $101 in payment of some work he had previously done; they talked about the job and some new work, and Haupt "was feeling good."

This testimony, as explained by Warnholtz, was directed to showing that the defendant during this period was going about his work as usual, had a clear conscience and was unworried. None of these witnesses was cross-examined.

Gerda Melind Saure, Herbert's former girl friend, was recalled. She testified that Herbert's parents gave him a Plymouth automobile in 1940 on his twenty-first birthday. When Mrs. Haupt returned to America from a trip to Germany in 1939 she said she was "very happy to be back in the United States."

Benedict J. Short, one of Haupt's lawyers on his former trial, testified that, judging by a talk he had with Haupt on July 29, 1942, he was positive Haupt was insane.

Hugo Troesken, the youth who accompanied Herbert Haupt and Wolfgang Wergin when they left Chicago in June 1941, said the three had planned a pleasure trip to South America. They left in Wergin's car and traveled south, camping out along the way, until they reached Laredo, Texas. When they attempted to cross the border into Mexico Troesken was stopped because he had no citizenship papers. His

two companions were permitted to pass, and they drove across the Rio Grande River bridge into Mexico. On cross-examination the witness was made to admit that he testified before the grand jury that Herbert Haupt had told him of plans to see the German consul in Mexico City about getting papers that would permit him to go farther.

On June 5 the defense rested. There was no rebuttal.

The summations followed much the same pattern as on the former trial, and on the eighth of June the Court delivered its charge to the jury. It was a fair, well-balanced charge and, as later held, free from error.

At 11:22 on the eighth of June 1944 the jurors retired. After an absence of twenty-eight hours they returned with their verdict: guilty as charged in the indictment. With their verdict the jurors directed a letter to Judge Barnes which read:

Your Honor, Judge Barnes:

Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant.

In conformity with your Honor's instructions neither pity nor sympathy has entered into our deliberations. In this plea we express only what is in our hearts.

Respectfully,
[signatures of the twelve jurors]

This communication probably saved Haupt's life. The defendant's motion for a new trial was argued on June 14 and overruled. On the same day the Court pronounced sentence.

Punishment for crime should tend to reform the person to whom it is applied—if reform is possible, tend to prevent him from repeating his crime, tend to protect society by reforming the individual to whom it is applied and by deterring him and other like-minded persons from committing like crimes.

Hans Max Haupt is fifty years old and, in spite of the fact that he has lived in this country since 1923 and was naturalized in 1930, is, and for a long time has been, a fanatical Nazi. He willingly and apparently gladly sacrificed his only child to the Nazi cause. This Court does not believe that Hans Max Haupt can be reformed. He is and always will be a Nazi. . . .

What punishment is necessary to be imposed in order to deter like-minded persons from committing like crimes? My conscience tells me there is but one answer to that question and that answer is—death. That would be the sentence, and there would be no oral or written observations thereon by the Court were it not for the facts hereinafter set forth.

The Court then referred to and read the communication which the jury had returned with its verdict and concluded:

The twelve men and women who signed that communication share with the Court the responsibility for the fate that shall overtake Hans Max Haupt. Not until after they had rendered a verdict of guilty did a duty rest on the Court to impose sentence. They are reasonable men and women and listened carefully to all the evidence. They heard all that the Court heard. They know all that the Court knows. They desire, as does the Court, to do right. In deference to the request of these men and women, whose judgment may be better than mine, the sentence will be life imprisonment and, because the statute requires it, a fine of $10,000.

Defendant's counsel immediately gave notice of an appeal, and the question of Haupt's guilt was again presented to the Court of Appeals.

It was eighteen months before the upper court handed down its opinion. Then, by a divided court, the judgment of the lower court was affirmed. Judge Evan A. Evans, the senior judge of the Seventh Circuit, wrote the majority opinion. He carefully reviewed the evidence and thus stated his conclusion:

A study of the entire record leaves us with the impression that the trial was conducted in a manner such as to impart confidence in the fairness and earnestness of the effort of the Court to accord the defendant every right which our laws extend to all, regardless of the nature of the crime charged, or the strength or weakness of the evidence which the accused might offer.

Judge Evans rejected the contentions of the defendant's lawyers that the twelve overt acts charged and submitted to the jury had not been proved in accordance with the Constitutional requirement.

Judge Major, who had written the opinion of reversal in the former case, filed an able but extraordinarily blunt and critical dissent from the majority opinion.

A petition to the Court of Appeals for a rehearing was denied on January 24, 1946. Defendant's last recourse was a petition for leave to appeal directed to the highest court in the land—the Supreme Court of the United States. This was granted, and on March 31, 1947, more than a year later and more than four and one half years after the defendant's arrest, the last word was pronounced.

The Supreme Court (Mr. Justice Jackson speaking for it) rejected the claim of defendant's counsel that the overt acts alleged were "insignificant" and did not constitute treason, even if proved. They were, said the Court, clearly in aid and comfort of and helpful to Herbert Haupt in his mission for enemy Germany.

The Court's conclusion wrote a definite finis to the long effort of Hans Haupt to escape the consequences of his acts.

Haupt has been tried twice and twice found guilty. The law of treason makes, and properly makes, conviction difficult but not impossible. His acts aided an enemy of the United States toward accomplishing his mission of sabotage. The mission was frustrated, but defendant did his best to make it succeed. His overt acts were proved in compliance

with the hard test of the Constitution, are hardly denied, and the proof leaves no reasonable doubt of the guilt.

On May 5, 1947, the mandate of the Supreme Court affirming the judgment against Hans Haupt was filed in the District Court of the United States for the Northern District of Illinois. A week later the old indictment against him, which had been left pending and undetermined, was dismissed, and Haupt was taken to the Federal penitentiary at Springfield, Missouri, to begin his life sentence.

As this is written, he is still there.

The Rest of the Story

Shortly after the second conviction of Hans Haupt the Government's attorneys concluded that, without their confessions (which the Court of Appeals had held to be inadmissible), the available evidence against Erna Haupt, Walter and Lucille Froehling and Otto and Kate Wergin was insufficient to convict any of them of treason. The Government was satisfied, however, that it could make a strong case against Walter Froehling and Otto Wergin of misprision of treason.[17] Counsel for the defendants, faced with the uncertainties of retrials and hopeful of releasing the women defendants, were willing to negotiate. An agreement was worked out accordingly. Walter Froehling and Otto Wergin pleaded guilty to new indictments charging them with misprision of treason and were each sentenced to five years' imprisonment. Erna Haupt consented to denaturalization and detention in an internment camp for the duration of the war. Lucille Froehling and Kate Wergin were unconditionally released. The pending and undetermined indictments against all five were dismissed.

[17] Misprision of treason is defined (U. S. C., Title 18, Sec. 2382; F. C. A., Title 18, Sec. 2382) as the act of one who, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not make the same known as soon as may be to the President, a Federal judge, a state governor or a state judicial officer.

Of the alleged accessories arrested in New York and accused of aiding the other saboteurs, only two were tried for treason. The case against one of these (Leiner) was withdrawn from the jury by the Court at the close of the evidence. In the case against the other (Cramer) the jury convicted and the defendant was sentenced to forty-five years' imprisonment, but the judgment of conviction was reversed by the United States Supreme Court (325 U. S. 1). Leiner and Cramer were afterward indicted under the "Trading with the Enemy Act" (U.S.C., Title 50, App. Sec. 1; F.C.A., Title 50, App. Sec. 1). Both pleaded guilty and were given imprisonment terms of eighteen and twelve years respectively. Two others (Hedwig Engemann and Faje) pleaded guilty to misprision of treason and received sentences of three and five years respectively. There were a number of others—noncitizens—who were known to have had contacts with one or another of the saboteurs and were taken into custody. The connections of some of these were shown to be casual or innocent, and they were released. Others were interned for the duration of the war.

The truth as to how the F.B.I. accomplished the speedy roundup of the eight saboteurs was not divulged until November 8, 1945, when Attorney General Clark made the story public. Then it was revealed that on the day after the saboteurs landed, one of them—Dasch—telephoned the office of the Bureau in Washington and told an answering agent that he had a tale of projected German sabotage to tell. He would be in Washington the following Thursday or Friday and wanted to talk to the director, J. Edgar Hoover, at that time. Dasch was asked his name and answered that he did not feel it was safe to give it over the telephone; the F.B.I. operator should note the time of the call and put it down as having come from "Pastorius."[18] On the following Friday Dasch went to Washington and again telephoned the offices of the

[18] "Pastorius" was the German code word for the sabotage expedition. Franz Daniel Pastorius was supposedly the first German immigrant to set foot on the shores of America.

F.B.I. He identified himself as Pastorius and was connected with the director. Speaking to Mr. Hoover, he gave his real name and hotel-room number and said he would await the call of the Bureau's agents. He did not have long to wait. Two of the Bureau's men took him into custody and brought him at once to the director's office. There he made a full disclosure of the plot.

He declared that neither he nor Burger had ever intended to carry out the program outlined for them by the Nazis. Dasch had been a private in the German army in World War I. He came to the United States shortly after that war had ended and married an American girl, and in 1939, when the second World War broke out, he declared his intention to become an American citizen. The declaration of war, however, and a feeling of sympathy for the declared ideology of the National Socialist Party induced him to return to Germany and re-enlist in the army. His wife remained in America. According to Dasch's statement, he was completely disillusioned by contact with the actual conditions in Germany, concluded that Nazism would lead to Germany's destruction and determined to escape to the United States at the first opportunity and work against the Hitler regime. Burger, said Dasch, had been a storm trooper and an aide-de-camp to Ernest Roehm, who was killed by the S. S. (Schutte-staffel) on Hitler's orders. Burger himself narrowly escaped death. In 1940 he fell afoul of the Gestapo and spent seventeen months in a concentration camp. In July 1941 he was released and ordered to report to the German army. The following April he was sent to the Brandenburg sabotage school. Consumed with a hatred of Hitler because of the murder of his friend Roehm and his own sufferings in the Nazi prison camp, Burger determined to betray Hitler at the first opportunity.

Dasch had previously arranged with Burger that he should be in his hotel room on the twentieth and leave his door unlocked so that the F.B.I. could arrest him without arousing anyone's curiosity. Dasch gave the F.B.I. the address and

room number. At 5:00 on the day indicated the agents walked into Burger's room. He had his personal belongings packed and readily accompanied his captors to Washington.

Burger gave the F.B.I. a statement (sixty-six closely typed pages) which detailed the entire Nazi plan. His descriptions of his fellow saboteurs and all his associates in the Brandenberg school were so detailed and intimate that the veriest tyro in police work would have experienced no difficulty in identifying them.

This should not be taken as belittling the Bureau's actual accomplishment. Having been handed the essential information, so to speak, "on a platter," the Government agents performed a prompt and efficient job in rounding up the saboteurs and their accessories. And, whatever may be said about their methods with suspects, they secured evidence which resulted in verdicts of death for six of the saboteurs, prison sentences for seven accessories, and denaturalization and internment for a half-dozen others. Moreover, there can be no doubt that the prompt apprehension and trials and the publicity attendant on both had the salutary effect of dampening the zeal of Nazi plotters of sabotage both at home and abroad.

The critical Chicago *Tribune,* in an editorial published November 10, 1945, captioned "Fact and Fiction," came up with a disturbing observation:

> The true story of the saboteurs indicates a grave miscarriage of justice. Dasch, who gave the government its case on a platter, was sentenced to thirty years, and Burger to life imprisonment. If Mr. Clark is now telling the truth, these men never intended to carry out their mission. The worst they deserve is deportation.

Here, however, the Government had at least practical justification. To convict the saboteurs' accessories of treason or misprision of treason or trading with the enemy, it was necessary to prove that Herbert Haupt and his German as-

sociates were enemy spies. This could have been done effectively only through the testimony of one or more of the saboteurs. The sentences passed on Dasch and Burger (to use the vernacular) "kept them in line" as Government witnesses. Burger, the brighter of the two, testified for the Government at least six times. Dasch was held in readiness as a witness if for any reason Burger failed to "come through."

By April 27, 1948, the criminal dockets had been cleared of all the cases which had grown out of the abortive efforts of the eight saboteurs. Haupt, Froehling, Wergin, Cramer, Leiner, Engemann and Faje had been put behind prison bars. Peace, albeit an uneasy one, had returned to the land. There was no longer a necessity for holding Dasch and Burger. Justice could now be dealt them. It took the form of an executive order suspending their sentences and permitting them to return to the Western Zone of Germany. Quite possibly that had been the plan of the Government from the beginning.